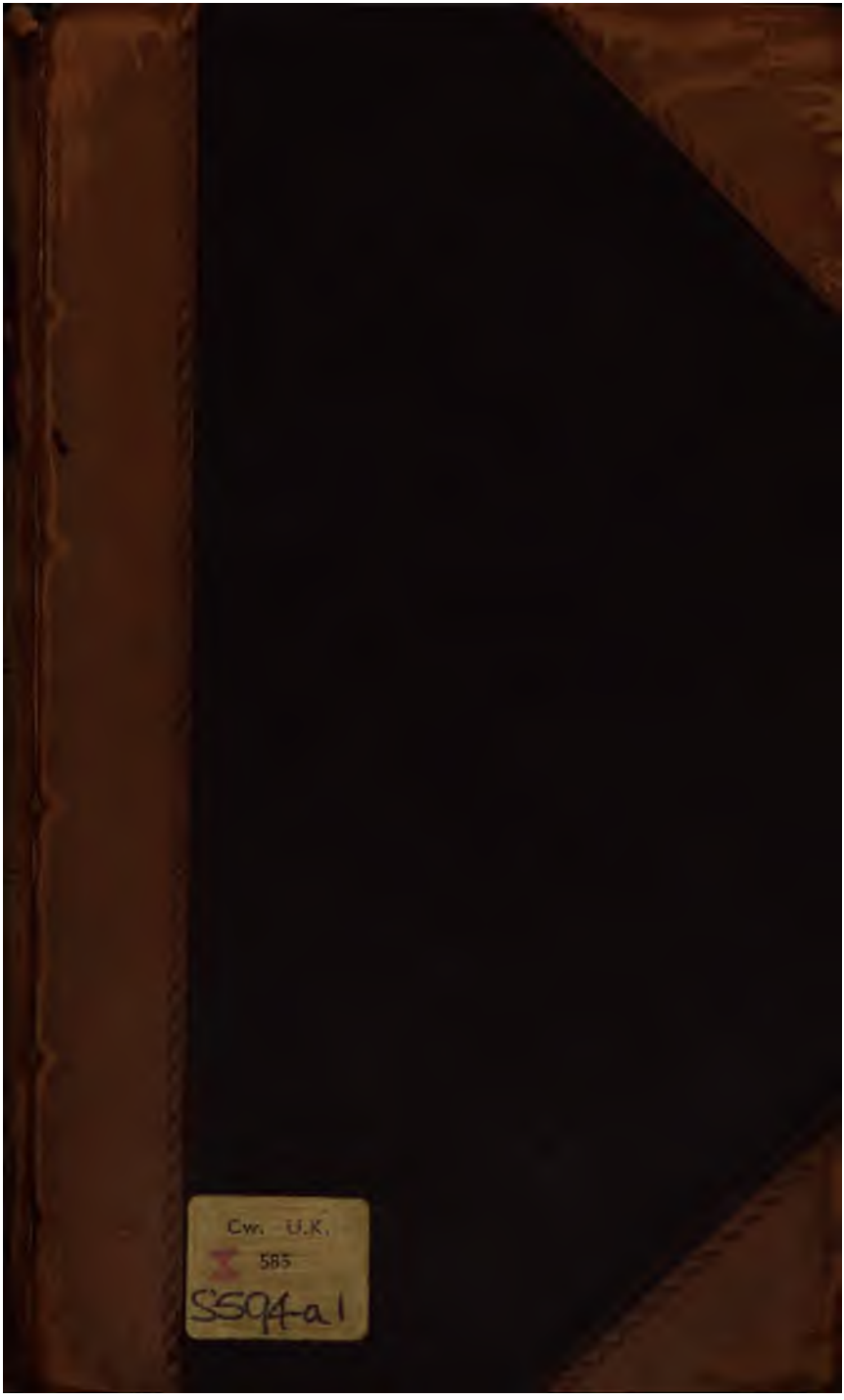
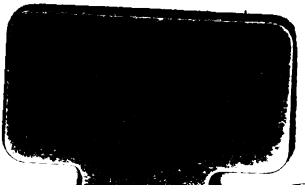




A

PRACTICAL TREATISE

OF THE

LAW OF INTERPLEADER,

WITH

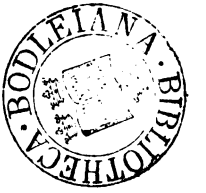
An Appendix,

CONTAINING

THE INTERPLEADER ACT,

AND

FORMS OF NOTICES, AFFIDAVITS, RULES, FEIGNED ISSUES, &c.



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PREFACE.

THE increasing importance of the Law of Interpleader keeps pace with the multiplying transactions of this great commercial country; and the author of the following pages feels that the subject is well worthy of a more experienced pen than his; but in the absence of any other work upon the subject, he has assiduously, though with diffidence, addressed himself to the task of collecting and arranging the cases and decisions to which the 1 & 2 Will. IV. c. 58, has given rise.

As the doctrine of Interpleader, before it became ingrafted upon our statute law some eleven years since, belonged almost exclusively to Courts of Equity, the author has devoted the

first chapter of his treatise to the consideration of the leading principles by which those courts are governed in deciding questions arising upon Bills of Interpleader, and it will be found that many of those principles have been adopted by the Common Law Judges.

The author's main object has been to furnish to the profession a work of practical utility upon this branch of our law. Whether he has attained that object or not is a question, in the solution of which his own opinion must go for nothing; but he has at least the satisfaction of knowing that neither pains nor exertions have been spared on his part to render the work complete.

25, Essex Street,
Oct. 1842.

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THE

LAW OF INTERPLEADER.

CHAPTER I.

THE DOCTRINE OF INTERPLEADER.—EQUITY JURISDICTION THEREIN.

IT is not proposed in this treatise to enter upon a lengthened detail of the principles and practice of courts of equity in reference to the doctrine of interpleader; but the introduction of some of the most prominent rules laid down by those courts upon the subject cannot fail to be useful, as, in all probability, cases may arise under the Interpleader Act, in which the courts of law will find it necessary, in administering the relief contemplated by this act, to adhere very nearly to the rules which have guided the equity judges in cases of a similar description (*a*).

(*a*) See Duer *v.* Mackintosh, 2 D. P. C. 730, in which this rule was adopted by Tindal, C. J., as to the question of costs, cited post, p. 33.

Legal remedies, being, for the most part, simple and direct in their nature, are therefore applicable merely between the immediate parties in the action, without regard to the claims of third persons. Hence it often happened that justice could not be administered on the common law side of Westminster Hall between all those actually interested, without an inconvenient circuity of actions, which rendered an appeal to the jurisdiction of equity absolutely necessary in such cases: that court alone having the means of bringing all the parties before it, of investigating their respective claims, and of awarding that measure of justice which the parties ought severally to attain, if, by circuity of actions, they were to proceed at law (*b*). But, although the subject of interpleader, in cases of the description referred to, belonged peculiarly to the courts of equity, yet, in certain cases of bailments, the common law enabled the bailee, if sued, to call upon the other parties who were interested in the property to appear and contest the title to it between themselves, and thus exonerate him from responsibility. For instance, if two persons deposited deeds or chattels with a third, to be re-delivered according to the terms of an agreement, and one of them brought an action

(*b*) Jeremy on Equity Jurisdiction, 346.

of *detinue* against the depositary, the latter might, upon a suitable allegation called *garnishment* (in effect a notice of suit), compel the other depositor to appear and become defendant in the action in his stead. So, if a person was sued in separate actions of *detinue* by two depositors, or by any two persons claiming the ownership of goods which he had found, he might, in like manner, allege the deposit or finding on the record, and compel the rival claimants to interplead. But as the relief by way of garnishment and interpleader was not available in any personal action except *detinue* (a form of action which has, of late, fallen greatly into disuse), very little (if any) practical advantage has been derived from this course of proceeding in modern times (*c*). The only mode, therefore, by which a person sued, or in danger of being sued, by several claimants, could obtain substantial relief before the passing of the 1 & 2 Will. 4, c. 58, was by filing a bill in equity to compel the parties to interplead at law. The jurisdiction of equity in this respect remains the same as it was before the Interpleader Act; and as, in the present state of the cases, it seems to be agreed

(*c*) For a more detailed account of the nature of this proceeding, see 3 Reeves's Hist. of the Law, 448; 9 Vin. Abr. Interpleader, 419, et seq.; 1 Bac. Abr. Bailment, D.

that relief cannot be obtained under the Interpleader Act against equitable *claims* (*d*,) and moreover, as courts of law have jurisdiction given them only where an action has been commenced (except in the case of the sheriff), parties may still be *compelled* in some cases to seek redress by bill of interpleader. (*e*) Where the matter in dispute is of sufficient amount and importance to warrant the more expensive course, it may, perhaps, often be far more advantageous for the parties to file their bill; but where the amount of the property is comparatively small, the relief attainable under the Interpleader Act will, in most cases, be found adequate, and may be resorted to with great advantage to the parties.

The true principle of interpleader arises where a party, being, as it were, the holder of a stake which is contested equally by two claimants, (respecting which the holder himself is wholly indifferent, and the right to which can be fully and satisfactorily settled by interpleader between the other parties,) fears that he may suffer injury from their conflicting claims, and therefore prays

(*d*) Sturgess *v.* Claude, 1 Dowl. 305; Roach and others *v.* Wright, 8 M. & W. 155. *Sed vide* Putney *v.* Tring and others, 5 Mee. & W. 428. In the latter case, however, the opinion which fell from the court seems to have been hardly called for by the exigencies of the case.

(*e*) 1 & 2 Will. 4, c. 58, ss. 1 and 6.

that they may be compelled to interplead and state their several claims, so that the court may adjudge to whom the matter in question belongs (*f*).

The foundation of the remedy by bill of interpleader being this admitted want of interest in the depositary, he is to be protected, not only from being compelled to pay more than once, but from the vexation attending the different actions which may be instituted against him (*g*); but as this branch of equity jurisdiction is capable of being resorted to collusively, in order to give an undue advantage to one of the contending parties, the plaintiff is required to annex an affidavit to his bill, expressly alleging that he does not exhibit it by *fraud* or *collusion* with either of the defendants, but *spontaneously* for his own protection; and if he should neglect this formality, the bill would, upon demurrer, be dismissed So, if there is money in question, he must bring it into court, or at least offer to do so, otherwise his bill will be fatally defective (*h*).

(*f*) 2 Danv. Abr. 777; 2 Ves. jun. 109, 310; Johnson *v.* Atkinson, 3 Anstr. 798; Woollaston *v.* Wright, id. 801; and vide Mitchell *v.* Haynes, 2 Sim. & Stu. 63, and numerous other cases cited in Mitf. Eq. Pl. (by Jeremy), 48, 49.

(*g*) Angel *v.* Madden, 15 Ves. 244; and vide Langston *v.* Boylston, 2 Ves. jun. 109.

(*h*) See numerous cases cited in Mitf. Plead. (by Jeremy), 48, 49.

The bill must also show that each of the defendants, whom it seeks to compel to interplead, claims a right; and if it fails to do so, both the defendants may take the objection by demurrer; the one because the bill shows no claim of right in him, the other because the bill showing no right in the co-defendant, discloses no ground for the interference of the court (*i*).

The remedy by bill of interpleader may be resorted to, although the demand of one is by virtue of an alleged *legal*, and of the other an alleged *equitable* right (*k*). The claims must be specifically set forth in the bill, so that it may appear whether they are the fit subject for interpleader; for this remedy (at least independently of statutable provisions) is not ordinarily applicable, except in cases where there is privity of some sort between all the parties, such as privity of estate, or title, or contract, and where the claim by all is of the same nature and character. But where the claimants assert their rights under adverse titles, and not in privity, and where their claims are of different natures, the bill cannot be sustained (*l*). For

(*i*) 1 Ves. 249.

(*k*) Morgan *v.* Marsack, 2 Meriv. 111. *Mere equities*, however, will not support such a bill, Barclay, *v.* Curtis, 9 Price, 661.

(*l*) Mitf. Eq. Plead. (by Jeremy), 142, 143, n. (*r*); Dungey *v.* Angove, 3 Bro. C. C. 36; 2 Ves. jun. 304.

instance, a tenant liable to pay rent may file a bill of interpleader where there are several persons claiming title to it in privity of contract or of tenure (*m*). But if a mere stranger should set up a claim to the rent by a title paramount, and not in privity of contract or tenure; or if he should set up a claim of a different nature, such as a claim to *mesne* profits in virtue of his title paramount, in such case no bill of interpleader would lie in behalf of the tenant; for the debt or duty is not the same in nature or character (*n*).

The plaintiff must also show that there are proper persons *in esse*, capable of interpleading and setting up opposite claims, otherwise the objects of the bill would be unattainable. For instance, where a bill was filed, founded on a rumour that there was issue by a person, which issue was suggested to be entitled to the matter in question, and praying that if there was any such issue, he might be compelled to interplead with the other defendant, the bill was held to be one of a novel impression, and untenable (*o*).

(*m*) 2 Story on Equity, s. 811, 812 to 821; vide also Lownde v. Cornford, 18 Ves. 299.

(*n*) Vide Clark *v.* Byne, 13 Ves. 383; Crawshay *v.* Thornton, 2 Myl. & C. 1, in which most of the cases upon this head are cited and very ably discussed.

(*o*) Metcalf *v.* Harvey, 1 Vez. 248; 2 Story on Eq. s. 821; 1 Mont. Eq. Pl. 234.

The plaintiff is also bound to make out a clear title in himself to maintain the bill, otherwise it will be dismissed, however proper the case may seem to be for interpleader in other respects (*p*). For instance, if the bill should show that the title of the plaintiff is that of an agent of one of the parties only, as if he had received money by the authority of his principal and for his use, he would be bound to pay over the money to his principal, notwithstanding any intervening claims of a third person; for a mere agent to receive for the use of another cannot be converted into an implied trustee by reason of an adverse claim, since his possession is the possession of his principal (*q*).

If, on a bill of interpleader, all the defendants but one live out of the jurisdiction, the plaintiff, after a reasonable time, having used due diligence to bring them before the court, will be decreed to give up the subject to the only defendant who appears, and will be protected afterwards against the others by injunction (*r*).

Where a house insured was burnt down, and

(*p*) Mitf. Pl. (by Jeremy), 142, 143.

(*q*) Nicholson *v.* Knowles, 5 Madd. R. 47; Lowe *v.* Richardson, 3 Madd. 277; and vide Crawshay *v.* Thornton, 2 Myl. & C. 1.

(*r*) Stevenson *v.* Anderson, 2 Ves. & Bea. 407; and vide Martinius *v.* Helmuth, 2 Ves. & Bea. 412, 2d edit.; and S. C. Coop. 245.

the tenant filed a bill for the specific performance of an agreement for a lease to the plaintiff, and against the insurance company to have the insurance money laid out in the rebuilding of the premises, and the landlord brought an action on the policy, the insurance company, it was held, were entitled to file a bill of interpleader, and to be paid the costs of both suits and of the action at law out of the fund in court (*s*). And where the conduct of a defendant made the bill of interpleader necessary, the court ordered him to pay all the costs; and in cases of this description it seems to be admitted, that where an interpleader suit has been properly instituted, the plaintiff has a lien upon the fund in court for the expenses which he has incurred (*t*).

If there be no fund in court, costs will be decreed against the party whose conduct occasioned the bill (*u*). And it is now settled that costs may be given as between the defendants to an interpleader bill, notwithstanding one decision to the contrary (*x*).

(*s*) Paris *v.* Gilham, Coop. 56.

(*t*) 2 Bro. C. C. 149; 16 Ves. 202; and vide Cowtan *v.* Williams, 9 Ves. 108.

(*u*) Aldridge *v.* Mesner, 6 Ves. 419.

(*x*) Cowtan *v.* Williams, 9 Ves. 108, and the cases in note; vide also Edenson *v.* Roberts, 2 Cox, 180; contra, Dowson *v.* Hardcastle, 1 Ves. jun. 368.

An interpleading bill being considered as putting the defendants to contest their respective claims, if the question between them is ripe for decision at the hearing, the court decides it at once; if not, an action, or an issue, or a reference to the master, will be ordered, as may be best suited to the nature of the case (*y*).

And if on a bill of interpleader a trial at law is directed between the defendants, the suit is thereby ended as to the plaintiff; and if the plaintiff dies, the defendants may still proceed, without reviving the cause (*z*).

The general rule seems to be, that the applicant for relief must be prompt in seeking the assistance of the court; but this rule does not apply where the course of proceeding taken by the different claimants is such, as, if persevered in, will determine their respective rights as between themselves, without the intervention of the court (*a*).

Where an injunction has been obtained in an interpleading suit, and the court sees that its continuance in full force may have the effect of enabling a stranger to deprive the parties to the suit of the legal rights which they have

(*y*) Angel *v.* Hadden, 15 Ves, 244.
(*z*) 1 Vern. 352 (last edit.), Anonymous.
(*a*) Sieveking *v.* Behrens, 2 Myl. & C. 581.

already acquired, the injunction will be suspended so far as to allow the proceedings at law to go on to judgment (*b*).

It is obvious that bills of interpleader may be most properly resorted to on many occasions; but the equity judges do not, it seems, look very favourably upon them; and Lord Hardwicke in one case expressed himself unwilling to allow *new inventions* in the bringing of such bills (*c*).

(*b*) Sieveking *v.* Behrens, 2 Myl. & C. 581.
(*c*) Metcalf *v.* Harvey, 1 Vez. 249.

CHAPTER II.

Relief afforded to Stakeholders by the First Section of the Interpleader Act (1 & 2 Will. IV. c. 58).

Cases within the First Section — Cases not within it — Time for making the Application for Relief — Collusion — Indemnity — Miscellaneous Points of Practice — Costs.

The preamble of this act recites, that "it often "happens that a person sued at law for the "recovery of money or goods wherein he has "no interest, and which are also claimed of "him by some third party, has no means of "relieving himself from such adverse claims "but by a suit in equity against the plaintiff "and such third party, usually called a bill of "interpleader, which is attended with expense "and delay (*a*)," for remedy whereof it is enacted by the first section, "that upon appli- "cation made by or on the behalf of any de-

(*a*) Vide 1 & 2 Will. 4, c. 58, s. 1, and 2 Rep. C. L. Com. 24, 25, 76, 77.

" fendant sued in any of his majesty's courts of " law at Westminster, or in the Court of Com- " mon Pleas of the county palatine of Lan- " caster, or the Court of Pleas of the county " palatine of Durham, in any action of assump- " sit, debt, detinue, or trover, such application " being made after declaration and before plea, " by affidavit or otherwise, showing that such " defendant does not claim any interest in the " subject matter of the suit, but that the right " thereto is claimed or supposed to belong to " some third party who has sued or is expected " to sue for the same, and that such defendant " does not in any manner collude with such " third party, but is ready to bring into court " or to pay or dispose of the subject matter of " the action in such manner as the court (or " any judge thereof) may order or direct, it " shall be lawful for the court, or any judge " thereof, to make rules and orders calling upon " such third party to appear and to state the " nature and particulars of his claim, and main- " tain or relinquish his claim, and upon such " rule or order to hear the allegations as well " of such third party as of the plaintiff, and in " the meantime to stay the proceedings in such " action, and finally to order such third party " to make himself defendant in the same or

" some other action, or to proceed to trial on " one or more *feigned issue or issues*, and also " to direct which of the parties shall be plaintiff " or defendant on such trial, or, *with the con-* " *sent* of the plaintiff and such third party, " their counsel or attornies, to dispose *of the* " *merits of their claims and determine the same* " *in a summary manner*, and to make such *other* " *rules and orders* therein *as to costs* and *all* " *other matters* as may appear to be just and " reasonable."

By sect. 2, " the judgment in any such action " or issue as may be directed by the court or " judge, and the decision of the court or judge, " in a summary manner, shall be final and con- " clusive against the parties, and all persons " claiming by, from, or under them."

By sect. 3, " *if such third party shall not* " *appear* upon such rule or order to maintain " or relinquish his claim, being duly served " therewith, or shall *neglect or refuse to com-* " *ply with any rule or order* to be made after " appearance, it shall be lawful for the court or " judge to declare such third party, and all " persons claiming by, from, or under him, to " be *for ever barred from prosecuting his claim* " *against the original defendant*, his executors " or administrators; saving nevertheless the

" right or claim of *such third party* against *the* " *plaintiff*; and thereupon to make such order " between such defendant and the plaintiff, as " to costs and other matters, as may appear " just and reasonable."

By sect. 4, " no order shall be made in pur- " suance of this act by a single judge of the Court " of Pleas of the said county palatine of Dur- " ham who shall not also be a judge of one of the " said courts at Westminster, and that every " *order* to be made in pursuance of this act by " *a single judge* not sitting in open court shall " be liable *to be rescinded or altered by the* " *court* in like manner as other orders made by " a single judge."

By sect. 5, " if upon application to *a judge* " in the first instance, or in any later stage of the " proceedings, he shall think the matter more " fit for the decision of *the court*, it shall be " lawful for him to refer the matter to the court; " and thereupon the court shall and may hear " and dispose of the same in the same manner " as if the proceeding had originally commenced " by rule of court instead of the order of a " judge."

And by sect. 7, " all rules, orders, matters, " and decisions to be made and done in pur- " suance of this act, except only the affidavits

" to be filed, may, together with the declaration " in the cause (if any), *be entered of record*, " with a note in the margin expressing the true " date of such entry, to the end that the same " may be evidence in future times, if required, " and to secure and enforce the payment of " costs directed by any such rule or order; and " every such rule or order so entered shall have " the force and effect of a judgment, except " only as to becoming a charge on any lands, " tenements, or hereditaments; and in case any " costs shall not be paid within fifteen days " after notice of the taxation and amount thereof " given to the party ordered to pay the same, " his agent or attorney, execution may issue for " the same by fieri facias or capias ad satis- " faciendum, adapted to the case, together with " the costs of such entry and of the execution, " if by fieri facias; and such writ and writs " may bear teste on the day of issuing the same, " whether in term or vacation; and the sheriff " or other officer executing any such writ shall " be entitled to the same fees, and no more, as " upon any similar writ grounded upon a judg- " ment of the court."

N. B. For the act at large, vide Appendix, Chap. I.; for forms applicable to cases arising under the 1st section, Id. Chap. II.; for those applicable to the 6th section, Id. Chap. III.; and for forms of entry of proceedings on record, process, &c. Id. Chap. IV.

Cases within the First Section.

This section is, strictly speaking, confined to actions of *assumpsit, debt, detinue* and *trover;* and therefore, where the declaration contained a count *in case* as well as trover, the court refused to interfere (*b*).

The words of the preamble are—"a person "sued *at law* for the recovery of money or goods, "wherein he has no interest;" and the party claiming relief is required to swear that he "is "ready to bring into court, or to pay or dispose "of the subject matter of the action in such "manner as the court (or any judge thereof) "may order or direct." The difficulty, therefore, with respect to unliquidated damages is in treating them "*as money or goods;*" inasmuch as the amount of damages to which the plaintiff may be entitled in such an action must depend on the verdict of a jury; and the defendant therefore cannot very well offer to bring into court or dispose of the subject matter of the action, in the manner required by the act. But in a case where goods, which had been consigned to A. and warehoused at the London

(*b*) Laurence *v.* Matthews, 5 Dowl. 149; and vide Walter *v.* Nicholson, 6 Dowl. 517.

Docks, were claimed by B., and the dock company required a sufficient indemnity from A., the original consignee, before delivering them to him, which was refused, and an action of trover was subsequently brought by A. against the dock company, with counts for special damage for the detention of the goods; the court, on motion by the company for relief under the Interpleader Act (B. not appearing upon due notice), held that the claim of B. against the company was barred; but that A. ought not by reason of that act to be precluded from recovering for his special damage, if any (*c*). A rule was therefore made, that on the defendants undertaking to deliver up the goods, if A. should accept the same, then the action should be discontinued upon payment of costs by the defendants; but if A. should go on with the action, the count in trover was ordered to be struck out, and A. was to proceed for the special damage only (*d*).

Strictly speaking, the defendant should have no interest whatever in the subject matter of the suit. Thus, where the defendant, who had pur-

(*c*) Lucas *v.* London Dock Company, 4 B. & Ad. 378; and vide Crawshay *v.* Thornton, 2 Myl. & Cr. 1. A defendant will in such a case be permitted to pay a sum into court by way of compensation and amends. Vide 3 & 4 Will. 4, c. 42, s. 21.

(*d*) 1 Tidd, 545, 9th ed.

chased cattle from the plaintiff, accepted a bill in payment, with a blank for the name of the drawer, and remitted it by post to the plaintiff. The bill subsequently came into the hands of B. and S. for a valuable consideration. The plaintiff denied that he had ever authorized payment by an acceptance, or that he had ever received the bill or indorsed it, and brought an action against the defendant for the price of the cattle. B. and S. also threatened to commence an action against him upon the bill: it was held that the defendant was not entitled to relief under the act, for possibly he might, under the circumstances, have been held liable to both the parties (*e*). It has also been decided that a wharfinger, who claims a lien on goods, which attaches only upon one of the parties by whom the goods are claimed, is not within the protection of the act (*f*). However, if the lien be such as will attach upon the goods in dispute, without reference to the party who ultimately may turn out to be entitled to them, it will not prevent the party who holds the goods from applying for relief. Thus, a claim for warehouse rent has been held not to be such an interest in the

(*e*) Farr *v.* Ward, 2 M. & W. 844; and vide Newton *v.* Moody, 7 D. P. C. 582; Regan *v.* Serle, 9 Dowl. P. C. 193.

(*f*) Braddock *v.* Smith, 2 Moo. & S. 131; 9 Bing. 84, S. C.

subject matter of a suit as will exclude a defendant from the protection of the act (*g*). Neither is it requisite that the right claimed by the third party should be an absolute right of property. It is enough that the defendant has received notice not to deliver the goods over to the plaintiff, until a demand made by the third party in respect of such goods has been satisfied (*h*).

In an action brought by A. against B., the court, upon motion under the Interpleader Act made by B., directed that an action for money had and received should be brought by C. against A. to try the right to certain money (*i*). So, where a bill of exchange had been lost by the bonâ fide holder, and afterwards found its way into the hands of the other party, two actions were subsequently commenced against the acceptor by the persons claiming to be the lawful owners thereof. The court directed an issue to try who was lawfully entitled to recover on the bill, and relieved the acceptor from all claim in respect of costs (*j*). In this case, the

(*g*) Cotter *v.* The Bank of England, 3 Moo. & S. 180; 2 D. P. C. 728, S. C.

(*h*) Harwood *v.* Bentham, 1 L. J. (N. S.), Exch. 180.

(*i*) Pooley *v.* Gooodwin, 5 Nev. & M. 466; 1 Harr. & W. 567.

(*j*) Regan *v.* Serle, 9 Dowl. P. C. 193; and vide Newton *v.* Moody, 7 D. P. C. 582; S. C. Will. Woll. & Hodg. 554; Farr *v.* Ward, 2 M. & W. 844.

original bonâ fide owner was held entitled to the amount of the bill and all costs from the wrongful claimant, so as to give him a complete indemnity (*k*).

In a joint action of trover against two defendants, one of them, who claimed no title to the goods, was held to be entitled to relief under the Interpleader Act, but was refused his costs, on the ground that he had declined accepting an indemnity from one of the parties (*l*).

Where an uncertificated bankrupt brought an action for work done by him, and, on a reference, a certain sum was found to be due to him, which his assignees thereupon claimed from the defendant, it was held that, on a fresh action being brought by the bankrupt for the amount so awarded, the defendant might call upon the assignees, by an interpleader rule, to support or abandon their claim; and that upon such rule, the lien of the bankrupt's attorney for his costs in the former action and the reference ought to be satisfied out of the amount claimed (*m*).

The Interpleader Act does not take away or in any way interfere with the remedy by bill of interpleader in equity; yet it seems that if a

(*k*) Jones *v.* Regan, 9 Dowl. 580.
(*l*) Gladstone *v.* White, Lewis and another, 1 Hodges, 386.
(*m*) Jones *v.* Turnbull, 2 M. & W. 601.

party has taken his case into equity, the courts of law will be slow to interfere afterwards (*n*).

It was decided in the Bail Court, on an application by the sheriff for relief, that the Interpleader Act did not extend to claims merely of an equitable character (*o*). But in a subsequent case, before the full Court of Exchequer, a contrary opinion was held; and Alderson, B., in commenting upon the case of Sturgess *v.* Claud, said, "If a party set up as a legal claim "what is in reality only an equitable one, the "sheriff is still exposed to the hazard of an "action. I very much doubt whether the doc- "trine laid down in Sturgess *v.* Claude be cor- "rect. The act speaks of a party having no "means of relieving himself from certain ad- "verse claims but by a suit in equity, usually "called a bill of interpleader; and it gives "power to a court of law to determine the "matter in a more summary manner, without "compelling him to stay proceedings by such a "bill. Now I take it that a man may file a "bill of interpleader when one of the claims "against him is of a legal and the other of an "equitable nature. Suppose, for instance, the

(*n*) Arrayne *v.* Lloyd, 1 Bing. N. C. 720; S. C. 1 Scott, 609, vide ante, p. 4.

(*o*) Sturgess *v.* Claud, 1 D. P. C. 505, per Patteson, J.

" property of a cestui que trust, in the hands of " his trustee, was seized by a third party, can " it be said that in such case the cestui que " trust is to be left entirely without remedy? " If this view be correct, the declaration in " Sturgess *v.* Claude, which is only that of a " single judge, is necessarily erroneous (*p*)."

Cases not within the First Section.

The applicant for relief under the act must have good and sufficient grounds for making the application, and his affidavit must fully describe the nature of the claim set up (*q*). In one case, where a defendant obtained a rule upon the suggestion that a third party claimed the amount in his hands, and it afterwards appeared that the defendant had no good grounds for supposing that he should be sued by the third party, the rule obtained by him was discharged with costs (*r*). In like manner, where a proceeding was merely " threatened" against a stakeholder, relief under

(*p*) Putney *v.* Tring and others, 5 Mee. & W. 425; 7 D. P. C. 811; sed vide Roach and others *v.* Wright, 8 Mee. & W. 155, in which the opinion that courts of law cannot relieve where the claim is merely of an *equitable* character, seems to be confirmed.

(*q*) Powell *v.* Lock, 3 Ad. & Ellis, 315.

(*r*) Sharp *v.* Redman, Will. Woll. & D. 375; 1 Jur. 775; Harrison *v.* Payne, 2 Hodges, 107.

the act was refused (*r*). The words of the first section are, "any defendant sued." But in the case of the sheriff, a claim having been made is sufficient to entitle him to relief (*s*). Where a party by his own act is placed in a situation to be sued, he cannot call upon the court to substitute another defendant in his stead. "The "act of parliament," observed Tindal, C.J., "is "not *compulsory*, but authorizes the interposi- "tion of the court, at its discretion, *upon pro- "per occasions;* and our duty is to see that the "party applying for the exercise of our discre- "tion has not voluntarily put himself in the "situation from which he calls upon the court "to extricate him (*t*)."

The statute does not apply to a case where two parties claim a reward for obtaining the conviction of an offender from a person who offered the same. The grounds upon which this decision proceeds seems to be, that neither of the parties may ultimately turn out to be entitled to the reward. It is not like a case where one of the parties *must* be entitled (*u*).

(*r*) Per Patteson, J., Parker *v.* Linnett, 2 D. P. C. 562.

(*s*) Post, ch. 3.

(*t*) Belcher and others, assignees of Maberley, *v.* Smith, 9 Bing. 82; 2 Moo. & S. 184, S. C.

(*u*) Collis *v.* Lee, 1 Hod. 204; and vide Grant *v.* Fry, 4 D. P. C. 135.

The holder of title deeds is not, it seems, entitled to relief under the statute, trover for title deeds not being within the meaning of the act (*x*).

A wharfinger, who claims a lien on goods which attaches only upon one of the parties by whom the goods are claimed, does not come within the protection of the act (*y*).

A party gave a promissory note for money due from him on account of a certain purchase which he had effected. The promissory note was deposited with a third person for the benefit of the creditor, and portions thereon paid, and subsequently notice was given by the creditor not to pay any more sums to the bailee of the note. An action was thereupon brought by the *holder* of the note, in order to recover the balance due. An application was made by the defendant in anticipation of legal proceedings on the part of the real creditor to recover the purchase money still owing. The question was, whether such a case came within the protection of the act; and it was held by Coleridge, J., that it did not, upon the ground that

(*x*) Per Parke, B., Smith *v.* Wheeler, 3 D. P. C. 431; 1 Gale, 163.

(*y*) Braddock *v.* Smith, 2 Moo. & P. 131; 9 Bing, 84, S. C.; *sed vid.* Cotter *v.* Bank of England, cited ante, p. 20.

it could not be said that the defendant *did not claim any interest in the subject-matter of the suit,* it being a matter of interest to him to whom he was to pay over the money (*z*).

The defendant, having bought a rick of hay from the plaintiff (who was the executor *de son tort* of M. S.), received a notice from a third party before payment of the price, stating that he was the administrator of M. S., and demanding payment of the sum for which the hay had been sold. An action was subsequently brought by the plaintiff, claiming the performance of the contract made by the defendant; upon which the defendant applied for relief under the act, which was refused, upon the ground that a purchaser could not call upon his vendor to interplead with a third party (*a*).

Time for making the Application.

An action must have been commenced before the court can interfere under the first section of the act; and the proper time for making the application is after declaration has been delivered, and before the defendant pleads (*b*). The

(*z*) Newton *v.* Moody, 7 D. P. C. 582; S. C. Will. Woll. & Hod. 554; and vide Regan *v.* Searle, 9 D. P. C. 193.

(*a*) Per Alderson, B., James *v.* Pritchard, 7 Mee. & W. 216; 8 D. P. C. 890.

(*b*) Parker *v.* Linnett, 2 Dowl. 562; and vide 1 & 2 Will. 4, c. 58, s. 1.

fact of the defendant having obtained time to plead does not preclude him from afterwards obtaining relief under the act (*c*). We have already seen that the defendant is bound to make some inquiry into the nature of the claim set up(*d*); and no doubt the courts would be disposed, on all proper occasions, to allow him a reasonable time for that purpose; but, on the other hand, unnecessary delay in seeking the protection offered by the statute would meet with discouragement, upon the same principle as that which prevails in equity upon this subject (*e*).

Collusion.—Indemnity.

The applicant for relief is required by the 1st section of the act to show in his affidavit that he "does not claim any interest in the sub-"ject-matter of the suit, but that the right "thereto is claimed or supposed to belong to "some third party who has sued or is expected "to sue for the same, *and that such defendant* "*does not in any manner collude with such third* "*party*, but is ready to bring into court, or to "pay or dispose of the subject-matter of the "action in such manner as the court (or any

(*c*) Barnes v. Bank of England, 7 Dowl. 319; Will. Woll. & Hod. 50.

(*d*) Ante, p. 23.

(*e*) Ante, p. 10, and vide post, ch. 3.

"judge thereof) may order or direct." Therefore a stakeholder, who was sued for the recovery of property in his possession, in which he was not interested, but which was claimed by a third party, was refused relief in consequence of having identified himself with the interests of the adverse claimant, by taking an indemnity from him, and was made to pay the costs occasioned by his application (*f*). But, in another case, where a party was offered an indemnity, which he refused, the court granted the relief prayed for, but refused the applicant his costs (*g*). From which it would seem that the courts, with a view to discourage unnecessary resort to the relief afforded by the act, will not extend that relief in cases where the party has already accepted an indemnity, but will leave him to rely upon that; and in cases where he has refused a sufficient indemnity, although they may consider him entitled to the protection of the act in other respects, will not allow the costs of the application. Neither will the court assist a defendant who has, by officiously interposing in the affairs of another, exposed himself to adverse claims.

(*f*) Tucker *v.* Morris, 1 D. P.C. 639; 1 Cromp. & M. 73, S. C.

(*g*) Belcher *v.* Smith, 9 Bing. 82; 2 M. & Sc. 184, S. C.

Miscellaneous Points of Practice.

The affidavit of the stakeholder must state specifically the sum of money or goods in his hands, and negative any interest in himself in the subject matter in dispute, as well as collusion with the third claimant(*h*). It seems also that the statement of the adverse claimant must be verified by affidavit, in order to enable the court to judge whether he is entitled to be a party to the issue (*i*). But the courts have no power to try the merits of the respective claims upon affidavit, without the consent of the parties interested. They can only direct the trial of an issue, in order to ascertain who is the real owner of the property, and order the proceedings in the original action to be stayed in the meantime (*k*). A rule under the act cannot, however, be drawn up as a stay of proceedings, unless notice of the motion have been given to the plaintiff (*l*).

(*h*) 1 & 2 W. 4, c. 58, s. 1; Butler *v.* ——, 3 Law J. (N. S.) C.P. 62; and vide form, App. c. 1.

(*i*) Poweller *v.* Lock, 1 H. & W. 281; 4 Nev. & M. 852; 3 Ad. & E. 315, S. C.

(*k*) 1 & 2 W. 4, c. 58, s. 1; Bramidge *v.* Adshead, 2 D. P. C. 59; Allen *v.* Gibbon, id. 292; Northcote *v.* Beauchamp, cited in Parker *v.* Booth, 8 Bing. 86; 1 Moo. & Sc. 158; and vide Sloman *v.* Back, 3 B. & Ad 103.

(*l*) Smith *v.* Wheeler, 3 D. P. C. 431. Notice, however, is not requisite where the application is made by summons—Lush's Practice, p. 689.

Where a party has an action brought against him in different courts, by different claimants to the same property, he must, it seems, in order to relieve himself, obtain rules in both courts (*m*).

Jurisdiction is expressly given to a judge at chambers by the first section; and application may, therefore, be made to him by a stakeholder in the first instance; but this was not so in cases arising under the sixth section, until the 1 & 2 Vict. c. 45, s. 2, came into operation (*n*).

Where money has been paid into court by a stakeholder to abide the event of a feigned issue, the party succeeding cannot obtain the fund out of court until judgment has been signed on the feigned issue. The proceeding under the act is to secure the stakeholder against the adverse claims of both parties to the issue; and the second section makes the *judgment* in any such issue final and conclusive against the parties claiming; until judgment, therefore, the original defendant is not secured against future claims by the same parties for the same matter (*o*).

(*m*) Allen *v.* Gilby, 3 D. P. C. 143; see also Bragg *v.* Hopkins, 2 D. P. C. 151.

(*n*) Ibid. and vide post, p. 40.

(*o*) Cooper *v.* Lead Smelting Company, 1 D. P. C. 728; Bland *v.* Delano, 6 D. P. C. 293; vide post, p. 37. *Semble*, since the 1 & 2 Vict. c. 110, s. 18, this judgment would be a charge upon land, 2 Chitt. Archb. p. 1000. And rules made for

Where part of a sum claimed by two parties has been paid to one of them before adverse claim made, the adverse claimant has nevertheless a right, in case the stakeholder seeks to be relieved under the act, to have the whole original sum paid into court(*p*).

On an application to a judge at chambers under the Interpleader Act, an order was made, by consent of all parties, to refer the cause, on certain terms, to a barrister, instead of an issue being directed. The court subsequently refused to grant a rule nisi for varying the order, by introducing a fresh term into the reference, rendered advisable in consequence of information which one of the parties (an administratrix) had obtained since the hearing at chambers (*q*).

But the order for interpleading will sometimes be amended on payment of the costs of the application to all the parties who have been served with the rule nisi (*r*).

Where a plaintiff in an issue directed under

payment of costs under the Interpleader Act may be enforced immediately, without waiting to enter them of record—Lush's Practice, p. 690.

(*p*) Allen *v.* Gilby, 3 D. P. C. 143.

(*q*) Drake and another *v.* Brown, 2 C. M. & R. 270.

(*r*) Tilleard and another *v.* Cave, Elice *v.* Cave, 6 Bing. N. C. 251. *Semble*, the interpleader rule need not be enlarged from term to term; it keeps in force until every thing required by the statute has been effected, Levy *v.* Champneys, 4 Ad. & Ell. 365.

the act neglects to proceed to trial, the court will not allow the name of another claimant to be at once substituted, but will grant a rule nisi, to which the plaintiff originally appointed must be made a party, in order that he may have an opportunity of explaining the cause of his delay (*s*).

On a proceeding under the Interpleader Act, at the instance of a sequestrator, to settle the rights of several sequestration creditors of a beneficed clergyman, a creditor claimed under a warrant of attorney, which appeared by memorandum indorsed to be given by the clergyman for the purpose of securing an annuity granted by deed. Held, that the creditor need not show the deed in order to prove that it was free from objection, under stat. 13 Eliz, c. 20, the warrant of attorney being on the face of it regular (*t*).

An issue under the Interpleader Act being merely for the purpose of informing the conscience of the court as to whether the plaintiff or defendant is entitled to the goods in dispute, the court will not allow either party to set up the *jus tertii* (*u*).

(*s*) Lydal *v.* Biddle, 5 D. P. C. 244.

(*t*) Johnson *v.* Brazier, 1 Ad. & E. 624; S. C. 3 N. & M. 654.

(*u*) Carn *v.* Briee, 7 Mee. & W. 183.

If the plaintiff neglects to take the issue down for trial, the course is to apply to have the money in court paid out to the other claimant; and in this case the affidavit should be entitled in the original cause (*x*).

Costs.

The general rule is, that if the party applying for relief comes to the court with good faith, and in proper time, he will, if the parties appear to substantiate their claims, be allowed his costs out of the fund or proceeds of the property in dispute in the first instance (*y*). "It seems to "me," says Tindal, C. J., in Duer *v.* Mackintosh, "that the better course to pursue with "respect to costs would be to follow as nearly "as possible the practice of a court of equity (*z*). "There, where it appears that all parties have "acted properly, the fund is charged with costs. "I therefore think that in this case the fund

(*x*) Elliott *v.* Sparrow, 1 H. & W. 370.

(*y*) Duer *v.* Macintosh, 3 Moo. & Sc. 174; 2 D. P. C. 730; Cotter *v.* Bank of England, 3 Moo. & Sc. 180; 2 D. P. C. 728; Parker *v.* Linnett, 2 D. P. C. 562; Reeves *v.* Barraud, 7 Sc. 281; Agar *v.* Bleghen, 1 T. & G. 160; vide Gladstone *v.* White, 1 Hodges, 386.

(*z*) The following authorities may be referred to on the subject of costs in equity, viz. 6 Ves. 418; 2 Bro. C. C. 149; 1 Ves. jun. 368, and notes, 369; Hendrey *v.* Key, Dick. 291; 1 Daniell, 64, and notes.

" should in the first instance be charged with the " defendant's expenses of the motion." And these, with all the costs of the successful party, will ultimately fall upon the party who fails, whether upon the result of the issue or by the abandonment of his claim; and the fact of the loser being insolvent and unable to repay the costs payable to the defendant in the original action, does not affect the right of the latter to receive his costs out of the fund in court, and the successful party will be left to his action for the deduction (*a*). But on an application under the act, *if the claimant do not appear*, the court, it seems, has no power to award costs against him, the authority given in the act as to costs extending only to the plaintiff and defendant. The case is different when the application is under the 6th section of the act, for then " *the costs of such proceedings shall be in the discretion of the court.*" The course adopted by the courts in cases arising under the 1st section, when the third party does not appear, is to order each party to pay his own costs, and they cannot be obtained out of the fund in dispute. This rule, it is true, bears hard upon an innocent stakeholder; but in one case it was said by Williams, J., " The

(*a*) Pitchers v. Edney, 4 Bing. N. C. 721.

" applicant has overlooked the beneficial situa-
" tion in which he is placed by the Interpleader
" Act. If that act had not been passed, both
" the plaintiff and the person who has made
" the claim might have proceeded against him,
" and he would have had no relief except by
" the expensive mode of proceeding in equity.
" Now, although he has done nothing wrong,
" he is relieved by this summary and cheap ap-
" plication. He has therefore a great benefit
" conferred on him. But why is the fund in
" dispute to be diminished? What harm has
" the original vendor of these goods done? If
" there is any delinquent it is the person who
" has put forth an idle claim; but he is not
" before the court, and it may be doubtful if a
" court can award costs against him (*b*)." The rule drawn up in this case was, " that the claim-
" ant be barred of his claim, and the action be
" stayed on payment of the debt and costs of
" the original action, each party paying his own
" costs on the rule."

The successful party was, in one case, held entitled to the general costs of the issue, and also to the costs of the original and subsequent applications to the court, although he recovered

(*b*) Lambert *v.* Cooper, 5 D. P. C. 547; sed vide Bowdler *v.* Smith, 1 Dowl. 417; Beswick *v.* Thomas, 5 Dowl. 458.

only part of the property in dispute (*c*). But in another case, where a feigned issue had been directed under an interpleader rule, and the plaintiff claimed 182*l.* out of 492*l.*, but only recovered 50*l.*, the remainder being recovered by the defendant, the judge at chambers, in the exercise of the discretion given to him by the statute, directed each party to pay his own costs. A motion was afterwards made to set aside this order, on the ground that the plaintiff being substantially the successful party, he was entitled to costs; and, inasmuch as he was forced to give up the action which he had originally commenced by the proceedings under the Interpleader Act, his rights should be permitted to stand in the position in which they originally were; but the court held, that, unless in the execution of the discretion given to the judge by the statute a wrong conclusion had been induced, the court would not interfere; and the rule was accordingly refused (*d*). This decision appears to have had reference to the smallness of the proportion recovered by the plaintiff in comparison with the sum which he claimed, nearly one-third. And it seems to be now settled that the court will, when necessary, apportion the costs of an issue

(*c*) Staley *v.* Bedwell, 2 P. & D. 309.
(*d*) Carr *v.* Edwards, 8 D. P. C. 29.

under the Interpleader Act among the different parties, according to the result of the issue upon their different interests (*e*).

Where a party applies to the court by motion without having made application to the opposite party to do what the rule calls on him to do, he is not entitled to costs of the rule if the opposite party, on showing cause, confines himself to the question of costs (*f*). But where it is *necessary* to apply to the court in consequence of certain points which are likely to arise, and cannot be settled between the parties, the costs of the application will be allowed (*g*).

Where an issue has been directed under the Interpleader Act to try the right to a bill of exchange, the bonâ fide owner of it is entitled to the amount of the bill and all costs from the wrongful claimant, so as to give him a complete indemnity (*h*).

A rule *nisi* may be obtained by a successful party in an issue directed under the act, for

(*e*) Dixon and others *v.* Yates and others, 2 N. & M. 177; 5 B. & Ad. 313; and vide Murdock *v.* Taylor, 8 Scott, 604.

(*f*) Bowen *v.* Bramidge, 2 D. P. C. 213; Armitage *v.* Foster, 1 Wil. & Woll. 208; and vide Bramidge *v.* Adshead, 2 D. P. C. 59.

(*g*) Barnes *v.* Bank of England, 7 D. P. C. 319; S. C. Will. Woll. & Hod. 291; Meredith *v.* Rogers, 7 D. P. C. 596.

(*h*) Jones *v.* Regan, 9 D. P. C. 580; 5 Jur. 607, B. C.

the costs of the issue, the interpleader rule, and the application, before judgment has been actually signed; but the rule absolute will not be drawn up, except on condition of the judgment being completed (*i*).

(*i*) Bland *v.* Delano, 6 D. P. C. 293; Stanley *v.* Perry, 1 H. & W. 669; and vide Scales *v.* Sargeson, 3 D. P. C. 707.

CHAPTER III.

PROTECTION AFFORDED TO SHERIFFS AND OTHER OFFICERS IN CASE OF ADVERSE CLAIM BY THE SIXTH SECTION OF THE INTERPLEADER ACT. (1 & 2 WILL. IV. c. 58.)

Cases within the Sixth Section — Cases not within it — Time for making the Application for Relief — Collusion and Indemnity — Miscellaneous Points of Practice — Costs of Execution Creditor and Adverse Claimant — Costs and Expenses of Sheriff or other Officer.

THE sixth section of the Interpleader Act, after reciting that "difficulties sometimes arise in the "execution of process against goods and chat- "tels, issued by or under the authority of the "said courts, by reason of claims made to such "goods and chattels by assignees of bankrupts "and other persons not being the parties against "whom such process has issued, whereby she- "riffs and other officers are exposed to the "hazard and expense of actions; and it is rea- "sonable to afford relief and protection in such "cases to such sheriffs and other officers;" pro-

ceeds to enact, "That when any such claim "shall be made to any goods or chattels taken "or intended to be taken in execution under "any such process, or to the proceeds or value "thereof, it shall and may be lawful to and for "the court from which such process issued, "upon application of such sheriff or other offi- "cer made before or after the return of such "process, and as well before as after any action "brought against such sheriff or other officer, "to call before them, by rule of court, as well "the party issuing such process as the party "making such claim, and thereupon to exercise, "for the adjustment of such claims and the "relief and protection of the sheriff or other "officer, all or any of the powers and autho- "rities hereinbefore contained, and make such "rules and decisions as shall appear to be just, "according to the circumstances of the case; "and the costs of all such proceedings shall be "in the discretion of the court."

This clause did not give jurisdiction to a judge at chambers in the case of the sheriff; from which omission great inconvenience was experienced, as the relief contemplated by the act could not be obtained in vacation (*a*), unless

(*a*) Smith *v.* Wheeler, 1 Gale, 15; S. C. 3 Dowl. 431; Shaw *v.* Roberts, 2 Dowl. 25; Brackenbury *v.* Laurie, 3 Dowl. 180; Powell *v.* Lock, 4 Nev. & M. 352.

where a rule nisi had been granted by the court to show cause at chambers (*b*). But now it is by the 1 & 2 Vict. c. 45, s. 2, enacted, that "it "shall be lawful for any judge of the Courts of "Queen's Bench, Common Pleas, or Exchequer, "with respect to any such process issued out of "any of those courts, or for any judge of the said "Court of Common Pleas of the County Palatine "of Lancaster, or Court of Pleas of the County "Palatine of Durham (being also a judge of one "of the said three superior courts), with respect "to process issued out of the said Courts of "Lancaster and Durham respectively, to exer- "cise such powers and authorities for the relief "and protection of the sheriff or other officer as "may by virtue of the said last-mentioned act "be exercised by the said several courts re- "spectively, and to make such order therein as "shall appear to be just; and the costs of such "proceeding shall be in the discretion of such "judge."

The only means by which the sheriff could relieve himself before these enactments, where the right to property seized by him in the execution of process was contested by different

(*b*) Hailey or Haines *v.* Disney, 1 Hodges, 189; 2 Scott, 183, S. C.; Powell v. Lock, 4 Nev. & M. 852; Beames *v.* Cross, 4 Dowl. 122; and vide Bragg *v.* Hopkins, 2 Dowl. 151.

persons, was by a suggestion of the fact to the court from which the process issued, whereupon the time for making his return to the process would sometimes be enlarged, until the right was determined between the parties, or until one of them gave the sheriff a sufficient indemnity (*c*). Where the doubt involved a point of law this indulgence was generally granted (*d*). But the court could not be induced to interfere in this way, unless under very special circumstances; and the delay was by no means granted as a matter of course, because in ordinary cases the sheriff might, and it is apprehended he still may, impanel a jury to ascertain to whom the property in dispute belongs; and in some cases not within the act it may still be found advisable for him to adopt this course (*e*).

Cases within the Sixth Section.

The sheriff is bound, before he applies to the court, to inquire into the nature of the claims set up; for if he bring a party before the court in consequence of a claim which is clearly bad in law, he will be compelled to pay the costs

(*c*) Tidd, 9th ed. 1017; Shaw *v.* Tonbridge, 2 W. Bl. 1064—1181; and vide King *v.* Bridges, 7 Taunt. 294; 1 Bing. 71, S. C., Bernasconi *v.* Farebrother, 7 B. & C. 379; Tidd, 9th ed. 1017; Beavan *v.* Dawson, 4 Moo. & P. 387; 6 Bing. 566, S. C.

(*d*) See George *v.* Birch, 4 Taunt. 585.

(*e*) 2 Archb. Pr. by Chitty, p. 1004, (edit. 1840).

occasioned by his application (*f*). Therefore, where a fi. fa. was issued, but it appeared possession of the property had been previously taken by a mortgagee, and the execution creditor did not object to the mortgagee's right to hold possession, it was held that there was no conflicting claim within the meaning of the act. Taunton, J., in this case said, "Applications under the statute ought not to be considered as matters of course. It is the duty of the sheriff to make some inquiry before he comes to the court. He is not to be spared all trouble, and to abstain from making all inquiry. But where conflicting claims are advanced on which he cannot decide, he may then come to the court." So, where goods were taken in execution, and a claim was set up under a bill of sale, which bore date *after* the levy, the court discharged the sheriff's application for relief, and made him pay the costs of the execution creditor (*g*).

Although the sheriff is entitled to be relieved in respect of adverse claims, he nevertheless remains liable to the plaintiff for any loss he may have sustained by his (the sheriff's) negligence. If, therefore, in the execution of

(*f*) Bishop *v.* Hinxman, 2 D. P. C. 166.
(*g*) In re Sheriff of Oxfordshire, 6 Dowl. 136.

the writ there have been any default, this is a case in which the court will not interfere (*h*).

The court will not restrain the sheriff from selling goods seized under a fi. fa., on an offer of indemnity by a third person claiming the goods, which offer the sheriff had refused. In cases of this kind the sheriff has a clear right either to accept the indemnity, and rely for his protection upon that, or to apply to the court under the act (*i*).

There being no restriction in the act to the contrary, it seems the court will relieve the sheriff, although the claimant is an infant (*k*). "If there be any difficulty," observes Williams, J., in the case cited, "it is one which arises "between the litigant parties; but the sheriff "is at all events entitled to relief."

The sheriff will be relieved in case of an adverse claim in respect of property seized by him, although that claim is only of a lien, and not of the whole property. For although the act, from its language, would seem to have in view those cases only wherein the entirety of the property is claimed, yet the letter of the act will comprehend cases of claims of lien as well as of absolute property. In the commercial

(*h*) Brackenbury *v.* Laurie, 3 D. P. C. 180.
(*i*) Harrison *v.* Forster, 4 D. P. C. 558.
(*k*) Claridge *v.* Collins, 7 D. P. C. 698.

world, a lien may sometimes be equal to the value of the goods (*l*).

Where goods had been taken by the sheriff under a fi. fa., and sold by him, another fi. fa. having issued in the meantime against the same goods, and a party claimed title to the property against both the defendant and the sheriff, and the two plaintiffs alleging that the goods had been sold improvidently and in the face of notice from the owner, the court made a special order for relief of the sheriff under the act (*m*).

The court has no power to dispose summarily of the matter in dispute between the parties who appear on the sheriff's rule, unless by consent. This consent is required in cases of application under the first section of the act; and the sixth section gives only the same power as that granted by the first section. An issue must be directed (*n*), and this will be done although the goods (which must however have been *seized* by the sheriff (*o*)) are in the possession of ano-

(*l*) Ford *v.* Baynton, 1 D. P. C. 357. It seems to be now agreed that the sheriff is not entitled to relief under the act, where the claim is merely of an *equitable* character, Sturgess *v.* Claud, 1 Dowl. 505; Roach and others *v.* Wright, 8 M. & W. 155; contra, Putney *v.* Tring and others, 5 Mee. & W. 425.

(*m*) Slowman *v.* Back, 3 B. & Ad. 103.

(*n*) Curlewis *v.* Pocock, 5 D. P. C. 381; Bramidge *v.* Adshead, 2 D. P. C. 59; Allen *v.* Gibbon, id. 29.

(*o*) Holton *v.* Guntrip, 6 Dowl. 130; Scott *v.* Lewis, 2 Cr. M. & R. 289.

ther, and not of the defendant against whom execution has issued; for the act says nothing about the party who may be in possession of the goods (*p*).

Where a sheriff had seized goods under a *fi. fa.*, and afterwards, while in possession, upon notice from a third party that the goods belonged to him, having applied to the plaintiff for an indemnity, which was refused, thereupon sold the goods, and sought relief under the act: it was held, that the sheriff was entitled to protection, the fact of selling being of no consequence so far as he was concerned; for if he had a right to come to the court while the goods were in *specie*, he had also a right to come when he had sold them. And it was also said that the sheriff having sold certain goods which he thought belonged to the defendant, and finding that he could not obtain an indemnity from the plaintiff against the adverse claim, was compelled to come into court to protect himself (*q*).

A sheriff had applied to be relieved from the claims of the defendant's assignees on the property seized by him under a fi. fa. issued by the plaintiff. A rule was pronounced, authorizing the sheriff to withdraw, until the validity of the

(*p*) Allen *v.* Gibbon, 2 D. P. C. 292.
(*q*) Per Patteson, J., Baynton *v.* Harvey, 3 D. P. C. 344.

commission should be decided, with *liberty* to re-enter after that period. The commission was, about three years afterwards, declared to be invalid. The sheriff who had seized was out of office. The plaintiff applied to the court for a rule to require the sheriff to re-enter; but the court held that they had no power to compel the sheriff so to do: intimating, however, that if he thought proper to re-enter, he might do so under the terms of the rule (*r*). A rule was subsequently obtained calling upon the sheriff to show cause why he should not make his return to the writ, and made absolute, upon the ground, that, although the sheriff had a discretion, the party who issued the process had a right to know in what way the sheriff had exercised it (*s*).

Where another claimant appears, after a rule has been obtained by the sheriff under the act, an application may be made on the part of the sheriff to have the new claimant included in the rule; thus, in case of the bankruptcy of the claimant after the rule has been obtained, the sheriff may apply to have the assignees brought before the court in lieu of the original claimant (*t*).

(*r*) Wilton *v.* Chambers, 3 D. P. C. 12.
(*s*) Ibid. 3 D. P. C. 333.
(*t*) Kirk *v.* Clark, 4 D. P. C. 363

Cases not within the Sixth Section.

The court will not interfere to relieve the sheriff *quia timet*, unless an actual claim of property has been made; and notice of a fiat in bankruptcy having issued is not equivalent to a claim by the assignees to the goods sold, so as to entitle the sheriff to relief under the act; although it may afford sufficient ground for asking for time to return the writ (*x*). It must also be such a claim as could be enforced by action. Thus, where goods were seized under a fi. fa., and defendant's wife claimed them as vested in certain trustees to her separate use, and the defendant soon afterwards petitioned the Insolvent Court for his discharge, whereupon the sheriff applied for relief; on the appearance day to the rule, the trustees of the defendant's wife disclaimed any intention to interfere, and no one appeared on the part of the provisional assignee. The court said, "The "facts of this case do not bring it within the "Interpleader Act: in order to bring it within "the act, a claim must *be made to the property.* "Here, however, no claim is really made; but "the sheriff, being alarmed, calls upon persons

(*x*) Tarleton *v.* Dumelow, 5 Bing. N. C. 110; Bently *v.* Hook, 2 D. P. C. 339; and vide Scott *v.* Lewis, 2 C. M. & R. 289; but see Barker *v.* Phipson, 3 Dowl. 590.

"to come before the court and make claims. "Such a case is not within the act, and there- "fore the rule must be discharged (*y*)." A week's time, however, was given to the sheriff in this case, in order to enable him to sell the goods and return the proceeds. So, where a claim is made to property seized in execution by one who is partner of the defendant, it is not a case within the meaning of the act: a party does not make a claim merely by saying "I have an interest as partner." The duty of the sheriff is to seize and sell such interest as the defendant has. But in such a case, if the plaintiff deny the partnership, the court will oblige him to indemnify the sheriff (*z*).

Where it appeared that the undersheriff was in partnership with the solicitor to one of the claimants, the court refused to interfere (*a*). So where the undersheriff was partner in business with the execution creditor, relief under the act was refused (*b*).

The sheriff having levied under a fi. fa., re-

(*y*) Isaac *v.* Spilsbury, 2 D. P. C. 211; S. C. 10 Bing. 3; 3 Mo. & Sc. 341; and vide 8 Dowl. 155, note.

(*z*) Holmes *v.* Mentze, 4 D. P. C. 300, in which the following cases were referred to in the discussion: Parker *v.* Pistor, 3 B. & P. 288; Chapman *v.* Koops, id. 289; and cases collected in notes to Burton *v.* Green, 3 Car. & P. 308.

(*a*) Duddin *v.* Long, 3 D. P. C. 139, and vide post, 59.

(*b*) Ostler *v.* Bower, 4 D. P. C. 605.

ceived notice that several other writs of execution against the defendant's goods had been subsequently sued out, and that the first execution creditor was not entitled to the whole proceeds of the levy; he thereupon made application under the act, but was refused, as it was considered that he was sufficiently justified in paying over the proceeds of the levy to the first execution creditor; the notices being in fact but a struggle for priority of claim (*c*).

The sheriff is not entitled to relief under the act if he pays over the money to the execution creditor after notice of a claim by a third party, unless, upon application, he bring into court an amount equivalent to the sum which he has levied, minus the amount paid for rent and taxes. Per Lord Lyndhurst, C. B.: "The ob- "ject of the act of parliament was to afford "relief to the sheriff where two parties are "claiming the property, by making them fight "it out; but he must have either the goods or "the money in his possession. It does not "apply to a case where he has paid over the "money to one of the parties. The condition "in the first clause is, that the party does not "collude and is ready to bring the money into

(*c*) Salmon *v.* James, 1 D. P. C. 369; and vide Day *v.* Walduck, Lawrence *v.* Same, 1 Dowl. 523

" court. The words are, ' *that such defendant* " *does not in any manner collude with such* " *third party, but is ready to bring into court* " *or to pay or dispose of the subject-matter of* " *the action in such manner as the court* (*or* " *any judge thereof*) *may order or direct.*' " The obvious meaning of that clause is, that " the party applying has got in his possession " the property in respect of which he is sued, " and to which he claims no right; and I think " that clause governs the whole act (*d*)." This case was cited in argument in Donniger *v.* Hinxman (*e*), but disregarded by Littledale, J., who said, " It does not appear to me that it is ne- " cessary for the sheriff to deny collusion, al- " though it may be proper that a private person, " not standing in the situation of a public officer, " should be required to make such a denial;" and this dictum of Littledale, J., was followed by Taunton, J., in Dobbins *v.* Green (*f*).

Where a sheriff, after levying the amount of an execution on the defendant's goods, paid over the proceeds to the execution creditor, not having received any notice of a claim from any one, and afterwards an action was brought against him by

(*d*) Anderson *v.* Calloway, 1 D. P. C. 636; S. C. 1 C. & M. 182.

(*e*) Post, p. 59; and vide Chalon *v.* Anderson, 3 Tyr. 327.

(*f*) 2 D. P. C. 509; S. P. Bond *v.* Woodhall, 1 Ty. & Gr. 11.

the assignees of the defendant to recover the value of the goods, the court refused to interfere (*g*); and the fact of the sheriffs offering to bring into court a similar amount to that levied, to abide any order the court may make, will not, it seems, make any difference (*h*). "For," per Coleridge, J., "there is not any longer any "contending party with respect to the proceeds "of the levy made by the sheriff. It is true "that he is threatened with an action by the ad- "verse claimant; but how will granting a rule "under the act relieve him? If the sheriff bring "the amount in question into court, and when "the execution creditor is served with the rule, "he would not of course appear, and then his "claim would be barred; but barred as to what? "Barred as to the money in court, and not as to "the money already in his hands." So, a sheriff who has delivered over to a claimant goods taken in execution, is not entitled to relief under the act (*i*).

In one case the sheriff had gone to the premises for the purpose of levying, but upon a claim having been set up, withdrew without

(*g*) Scott and others *v.* Lewis, 4 Dowl. 259; 2 C. M. & R. 489, S. C.

(*h*) Inland *v.* Bushell, 5 D. P. C. 147; and vide Scott *v.* Lewis, supra; also ante, p. 50.

(*i*) Kirk *v.* Almond, 2 Law J. (N. S.) Exch. 13.

making any seizure. He afterwards applied for a rule under the act, and a rule nisi was granted, but it was subsequently discharged, with costs, upon the ground that the sheriff was not in any danger. It was contended in this case, that the act specially mentioned in the alternative (sect. 6), "*any goods or chattels taken or intended to* "*be taken*;" but the court said, "If the sheriff "withdraw upon a claim being set up, he does "not come to the court, intending to take the "goods, but exercises his own judgment (*k*)." So, where an execution had been levied, and a claim was subsequently set up under a bill of sale dated *after* the levy, the court discharged the rule against the sheriff, with costs to be paid to the execution creditor (*l*).

The court refused an interpleader rule on behalf of a sheriff who had been served with notice of a claim to goods taken in execution, made by a party who claimed a share in them as one of the next of kin to a person deceased, to whom the defendant had taken out administration, and who had previously obtained an injunction in equity against the defendant's disposing of the property taken in execution. In

(*k*) Holton v. Guntrip, 6 D. P. C. 130; S. C. 3 M. & W. 145.

(*l*) Re Sheriff of Oxfordshire, 6 D. P. C. 136.

such a case, if the execution creditor refuses to indemnify the sheriff from the consequences of a sale, the proper course for the latter to pursue is to apply to the court to enlarge the time for returning the writ (*m*).

The court refused to give a sheriff relief under the Interpleader Act, where a fi. fa. was delivered to him two months before notice of a fiat having issued against the defendant, and no reason assigned for the delay in the execution (*n*).

And where an attachment has been obtained against the sheriff for not returning the writ before he applies under the act, his application will not be granted unless he pays the costs of the attachment (*o*).

Time for making the Application.

The sheriff need not wait until an action has been brought against him before he applies to the court for relief; the words of the 6th section "as well before as after any action brought," expressly sanction an immediate application on the part of the sheriff. It is different with a stakeholder, the period for whose application is

(*m*) Roach *v.* Wright, 8 Mee. & W. 155.
(*n*) Lashmar *v.* Claringbold, 1 Harr. & Woll. 87.
(*o*) Alsmore *v.* Adeane, Hope *v.* Adeane, 3 D. P. C. 498.

defined in section 8 to be *after* declaration and *before* plea (*p*); but the courts will not interfere to relieve the sheriff *quia timet* unless an actual claim of property has been made (*q*).

If the sheriff seeks to be relieved under the act, he must be prompt in making his application after a claim has been made (*r*). Thus where goods were taken in execution by the sheriff under a writ returnable 11th January, and a claim being made to them, the sheriff was prevented from applying for relief under the act, by a rule obtained by the defendant in the action, for setting aside the proceedings for irregularity, which rule was not disposed of till the 23rd of January, when it was discharged; the court, deciding that the sheriff was too late in applying for relief on the 31st of January (though he was in Suffolk at the time the defendant's rule was discharged, and the affidavit was sworn there on the 30th), said, "If the "sheriff could not come at once to the court, "but was delayed by the rule, it was his duty "to have watched the rule and have come within "four days after it was discharged, as that would "have enabled the other parties to appear in the

(*p*) Green *v.* Brown, 3 D. P. C. 337.
(*q*) Isaac *v.* Spilsbury, 2 D. P. C. 211.
(*r*) Devereux *v.* John and another, 1 D. P. C. 548.

"same term." It was also decided in this case, that when delay or any other circumstance is to be accounted for, the sheriff must make a special affidavit, stating the facts, and no supplemental affidavit will be allowed (*s*).

Where a seizure having been made on the 25th November, and notice of claim served on the 28th, the sheriff did not apply until the following Easter Term, the full Court of Exchequer held that he should have applied for relief within such time in the term after the seizure and notice of claim, as would have enabled the parties to show cause in that term, and discharged the rule with costs to both the execution creditor and the adverse claimant (*t*). But it seems that a late application will, under special circumstances, be allowed; for instance, where there was delay on the part of the sheriff in coming to the court in consequence of negotiations between the parties, that was held to be a sufficient excuse for the sheriff's not applying *instanter* (*u*).

In like manner, where a fi. fa. having issued

(*s*) Cook *v.* Allen, 2 D. P. C. 11; Ridgway *v.* Fisher, 3 D. P. C. 567; S. C. 1 Harr. & Woll. 189; and vide Skipper *v.* Lane, 2 Dowl. 781; 4 Mo. & Sc. 283, S. C., in which a sheriff was relieved who came to the court eleven days after notice of claim. Vide also Barker *v.* Phipson, post, p. 57.

(*t*) Beale *v.* Overton, 5 D. P. C. 599.

(*u*) Dixon *v.* Ensell, 2 D. P. C. 621; and vide Skipper *v.* Lane, 2 D. P. C. 784, S. C. 4 Mo. & Sc. 283.

on the 23rd December, was received by the sheriff on the 24th, and on the 28th, being served with notice that a fiat in bankruptcy was about to be issued, he did not make application until the 16th of April. It appeared by a special affidavit in support of the motion, that although notice of the fiat had been served on the 28th December, yet no person was in existence who could legally be brought before the court until the 7th of April, when assignees were appointed, and the sheriff applying for relief upon the 2nd day of the ensuing term, the court held this to be a sufficient excuse for the delay (*x*). So, where goods were seized in execution on the 15th of August, and a notice of claim was given the next day. A second notice of claim was given on the 30th October on the part of another person. It was held, that an application by the sheriff was not too late on the 9th November, the second notice of claim being of such a special nature that the sheriff was entitled to some time for inquiry into the circumstances (*y*). It would seem that the sheriff should now apply at chambers under stat. 1 & 2 Vict. c. 45, s. 2, within a reasonable time, and should not wait for term; and in the event of *laches* in this

(*x*) Barker *v.* Phipson, 3 D. P. C. 590.
(*y*) Toulmin *v.* Edwards, Will., Woll. & Dav. 579.

respect, he will have to pay the costs of both parties, and probably he will be altogether refused relief.

Where on a notice of motion under the Interpleader Act, to be made on the 1st day of Hilary Term, or as soon after as possible, served on the 12th December on the claimant, a rule was obtained on the 2nd day of that term, and the officer who had obtained the rule did not attempt to serve the same until the 25th of January; on the hearing (when the claimant did not appear), the court held this to be delay and negligence, and on enlarging the rule by reason of insufficient service, directed the costs of the rule to be paid by the officer (*z*).

Collusion—Indemnity.

It seems to be now well settled that a sheriff or other officer applying to the court under the 6th section of the act need not deny collusion, although some doubt was thrown upon the point recently after the passing of the Interpleader Act (*a*). There is, in this respect, a distinction between applications made on behalf of indi-

(*z*) Lambert *v.* Townsend, 1 L. J. (N. S.) Exch. 113.

(*a*) Dixon *v.* Ensell, 2 D. P. C. 621; Anderson *v.* Calloway, 1 D. P. C. 636; 1 C. & M. 182; Cook *v.* Allen, 2 D. P. C. 14; and vide Appendix, c. I.

viduals under the 1st section, and applications by the sheriff under the 6th. The former expressly requires a denial of collusion by the party applying. The latter is silent in this respect; and the court will not require that to be done which is not required by the act (*b*).

No doubt the courts would look with very great jealousy at the conduct of the sheriff or his officer, and if any imputation either of collusion or interest could be fairly attached to him, would refuse to interfere, as in this and other respects they have a discretionary power given to them by the act, and in the exercise of it will only interfere on proper occasions (*c*). Thus, where it appeared that the under-sheriff was in partnership with the solicitor (one of the claimants), the application for relief under the statute was refused (*d*); and the court said, "the "sheriff ought to have no interest on either "side; and in the present case he would not "be considered to be without bias. There was "an intermixing of interest between the sheriff "and one of the claimants (the undersheriff

(*b*) Donniger *v.* Hinxman, 2 D. P. C. 424; Dobbins *v.* Green, 2 D. P. C. 509; Bond *v.* Woodhall, 4 D. P. C. 351; S. C. 1 Tyr. & Gr. 11.

(*c*) Belcher and others *v.* Smith, 9 Bing. 82; 2 Moo. & S. 184, S. C.

(*d*) Duddin *v.* Long, 3 D. P. C. 139.

" being the partner of the solicitor to the same), " which made it unadvisable to apply to the " former the relief provided by the statute;" and in Ostler *v.* Bower (*e*), where it appeared that the under-sheriff was the plaintiff in the action, the court refused to relieve the sheriff, although the latter made an affidavit denying collusion with either party, saying, " although the sheriff " himself may swear that he does not collude " with the plaintiff, yet he must be considered " as indemnified in the present case. The she- " riff is not obliged to accept an indemnity; but " if he do accept one, the court will not relieve " him. If the sheriff does not think proper to " fulfil his own office, but employs his under- " sheriff, and any thing is done wrong by him " or his officers, he has his remedy against " him."

The sheriff need not apply for an indemnity (*f*); nor will the court in general interfere to stay the sale under an execution, where an indemnity has been offered. The sheriff has his option to accept the indemnity or not, as he may deem advisable (*g*). But in one case, where

(*e*) 4 D. P. C. 605.

(*f*) Wills *v.* Popjoy, 10 Leg. Obs. 12; Crossly *v.* Ebers, 1 H. & W. 216; and vide Levy *v.* Champneys, 2 Dowl. 454.

(*g*) Harrison *v.* Foster, 4 D. P. C. 558; and vide Levy *v.* Champneys, 2 Dowl. 454.

a levy under a fi. fa. against defendant had been made, and he afterwards became bankrupt, the sheriff, upon application under the act, was ordered to pay the levy to the plaintiffs upon their security, and in default of security, then into court; and the court directed an issue between the plaintiffs and the defendant's assignees, to try the right to the money levied (*h*).

And even when the undisputed facts, on a rule obtained under the act, appeared to negative the alleged right of the adverse claimant to the property in dispute, the court directed an issue in relief of the sheriff, unless the execution creditor gave him a sufficient indemnity (*i*).

If the sheriff, having seized goods in execution, which are afterwards claimed, deliver up a portion to the claimant, he precludes himself from the advantage of the act. *Per cur.*: "The "object of the act was, that by means of a suit, "and one suit only, and that between the parties "really interested, the question of right should "be tried, and the sheriff exonerated. In which "case the claimant might try his right in an "action against the execution creditor; but he "would have a right to sue the sheriff for the

(*h*) Parker *v.* Booth, 8 Bing. 85; S. C. 1 Nev. & Sc. 156.

(*i*) Allen and another *v.* Evans, 3 Law J. (N. S.), Exch. 53.

"goods delivered up, and for returning *nulla* "*bona* as to part." The sheriff's rule was therefore discharged with costs, but he was allowed ten days to return the writ (*k*).

Where goods have been seized under a fi. fa., and on an adverse claim the execution creditor offers indemnity, the sheriff is not obliged to accept the offered indemnity, but may apply for relief under the act. He will, however, in such case, incur the expense of keeping possession of the goods until the final order of the court (*l*).

Miscellaneous Points of Practice.

The affidavit in support of the application by the sheriff should state the seizure of the goods under the execution — that the goods, or the proceeds thereof, are in his hands, and such other facts as may be likely to satisfy the court that it is a proper case for interpleader. And if there has been any delay, it must be accounted for in the first instance, as no supplemental affidavit will be allowed (*m*).

Instead of directing an issue, the court will

(*k*) Braine *v.* Hunt, 2 D. P. C. 391; 2 C. & M. 418.

(*l*) Levy *v.* Champneys, 2 D. P. C. 454.

(*m*) Northcote *v.* Beauchamp, 1 M. & Sc. 158; Cooke *v.* Allen, 2 Dowl. 11; 1 C. & M. 542; 3 Tyr. 586, S. C.; and vide ante, p. 60; and for form of affidavit, Appendix, c. III.

sometimes discharge the rule, and leave the sheriff to perform the duty cast upon him by law in the best manner he can; in which case, however, the sheriff will be entitled to a reasonable time to return the writ (*n*).

The court will not, if there be any doubt existing, try the respective merits of the claimants upon affidavit, but will direct an issue, or an action, against the sheriff (*o*).

The claimants may appear on the rule obtained by the sheriff, without taking office copies of the affidavit on which the rule was obtained; for such affidavits are required for the purpose of showing to the court that there is ground for interfering on behalf of the sheriff, and the claimant does not come to answer those affidavits, but to substantiate his own claim (*p*). And it seems that the execution creditor need not, on appearing, produce an affidavit (*q*).

If the adverse claimant appears on the sheriff's rule, and the execution creditor does not, the court will not, as a matter of course, order

(*n*) Rex *v.* Sheriff of Hertfordshire, 5 Dowl. 144; 2 H. & W. 122, S. C.

(*o*) Slowman *v.* Back, 3 B. & Ad. 103; Bramridge v. Adshead, 2 Dowl. 59; Northcote *v.* Beauchamp, 8 Bing. 86; 1 M. & S. 158, S. C.; Allen *v.* Gibbons, 2 Dowl. 292.

(*p*) Mason *v.* Redshaw, 2 D. P. C. 595.

(*q*) Angus *v.* Wotton, 3 M. & W. 310.

him to pay costs; for instance, he is not obliged to appear when there are no goods liable to his execution (*r*).

If the execution creditor, on being served with the sheriff's rule, do not appear, the court has not any power to bar his claim; section 3 of the act, by which a court is authorised, refers only to the case of a *third person* or *third party* (see section 3), but the execution creditor does not stand in the situation of a *third* party (*s*).

It has been decided that if the sheriff, under process issued by the same parties in causes in two different courts, have adverse claims set up to the property seized, he cannot, in an application to one court, include the process of the other court; but a separate motion must be made to each court (*t*).

If the sheriff do not give notice to the execution creditor of the adverse claim, and of his intention to apply under the act before motion for an attachment for not returning the writ, the court will grant the attachment, or compel the

(*r*) Glazier *v.* Corke, 5 Nev. & M. 680; sed vide Bryant *v.* Ikey and Beswick *v.* Thomas, cited ante, p. 35.

(*s*) Donniger *v.* Hinxman, Bishop *v.* Same, 2 D. P. C. 424.

(*t*) Bragg *v.* Hopkins, &c., 2 D. P. C. 151; Bland *v.* Delano, 6 D. P. C. 293; Allen *v.* Gilby, 3 D. P. C. 143; vide 1 & 2 Vict. c. 45, s. 2; Appendix, c. I.

sheriff to pay the costs of that motion before granting him the required relief (*u*). If the sheriff has delivered up any part of the goods to the claimant, the court will not interfere.

Where money, the proceeds of an execution, has been paid into court by the sheriff, pursuant to a rule under the act, and the claimant abandons his claim, the application for paying the money out of court to the execution creditor, together with his costs, is *nisi* in the first instance (*x*). And the party who makes the application is entitled to the costs of coming to the court, although he did not call upon the parties to do what the rule required before the application, provided he would have been obliged to come to the court on other points connected with it (*y*).

Where an order for an issue was made by consent at chambers by a single judge, for the relief of the sheriff, it was held necessary for the successful party, in order to obtain an order for his costs, to come before the court, the judge at chambers having no jurisdiction under the 6th section (*z*).

(*u*) Braine *v.* Hunt, 2 D. P. C. 39 ; 2 C. & M. 418 ; 3 Law J. (N. S.), Exch. 85 ; and vide Alemore *v.* Adean, ante, p. 54.

(*x*) Stanley *v.* Perry, 4 D. P. C. 599.

(*y*) Scales *v.* Sargeson, 3 D. P. C. 707.

(*z*) Matthews *v.* Sims, 5 D. P. C. 234 ; but now vide 1 & 2 Vict. c. 45, s. 2 ; Appendix, c. I.

Where a sheriff had taken goods in execution, and on an adverse claim being made to them, obtained a rule under the 6th section, to which the claimant did not appear, the court barred the claim and (as the original rule did not pray for costs) another rule was granted, ordering the adverse claimant to pay the execution creditor his costs of showing cause against the rule of the sheriff, unless cause was shown in six days from service of such rule (*a*).

On application by the sheriff under the 6th section, a third party, served with the rule and not appearing, is barred by the 3rd section from further prosecuting any claim brought in question by the rule; but the court will, under particular circumstances, order the sheriff or the execution creditor to pay to a third party, appearing and successfully prosecuting his claim, his costs of such appearance (*b*).

When the sheriff applies, no one has a right to be heard, unless he is called upon by the rule, although he is in fact a claimant; and if he be called upon in one character, he cannot appear in another (*c*).

(*a*) Perkins *v.* Burton, 2 D. P. C. 108; 3 Tyr. 51.

(*b*) Ford *v.* Dillon or Dilly, 5 B. & Ad. 885; S. C. 2 N. & M. 662; and vide Bowdler *v.* Smith, 1 D. P. C. 417; 2 Tyrw. 458; Parker *v.* Booth, 8 Bing. 85; 1 Moo. & S. 156; Field *v.* Cope, 1 Cr. & J. 85; Doble *v.* Cummins, 7 Ad. & Ell. 580.

(*c*) Clarke *v.* Lord, 2 D. P. C. 55; and vide 9 Dowl. 250.

When the landlord makes a claim for rent, and gives notice in proper time, the sheriff ought to pay him, otherwise the court will make the sheriff pay the costs of the landlord's appearing to the interpleader rule (*d*). And if the sheriff, under such circumstances, bring the landlord into court with other claimants, under the Interpleader Act, the court will order the rent to be paid to the landlord on his giving security, with costs; but the expense of such security will fall upon the sheriff (*e*).

Where the judgment creditor did not appear, and it was shown that the sheriff had been guilty of misconduct in conducting the seizure, the court, in granting the rule, reserved to the claimant his right of action against the sheriff for such misconduct; but barred the claimant from bringing any action of trespass against the sheriff for the original seizure (*f*).

If the plaintiff give the sheriff any special directions as to seizing property, he will be liable to an action at the suit of the real owner (*f*).

Where an execution was levied on the goods of a defendant, and the officer received notice of

(*d*) Vide Clark *v.* Lord, 2 D. P. C. 55.
(*e*) See Gethim *v.* Wilkes, 2 D. P. C. 189.
(*f*) Lewis *v.* Jones, 2 Gale, 211.

the defendant's bankruptcy some few days subsequently, and of a claim by the provisional assignee, "*or of any other persons who might be appointed assignees*," and a rule was obtained under the act, after the assignees were appointed, calling on the provisional assignee only to appear; it was objected that the provisional assignee had no right to appear, since his interest was entirely superseded by the appointment of the creditors' assignees, and that the creditors' assignees could not appear, for the rule did not call upon them to do so; but the court held otherwise, and an issue was accordingly directed between the execution creditor and the assignees (*g*).

Service of a rule (obtained under the 6th section) on the agent to the execution creditor is good service, and the court will not make any final order in the absence of the party, without an affidavit that he has been served with the rule. It had been doubted whether a judge at chambers had authority, on an enlarged rule of court, to adjudicate under the 6th section (*h*); but now by the 1 & 2 Vict. c. 45, s. 2, this authority is expressly given.

(*g*) Per Rolfe, B., in Ibbotson v. Chandler, 9 D. P. C. 250.

(*h*) Phillips v. Spry, 1 Law J. (N. S.), Exch. 115; Shaw v. Roberts, 2 D. P. C. 25; see 1 & 2 Vict. c. 45, s. 2; App. c. I.

Two attempts to effect personal service of a rule to appear under the act personally, and a service on the wife of the claimant at his dwelling-house has been held not to be good service (*i*).

When the interpleader rule has been obtained, no delay should take place in acting upon it, as the courts watch narrowly the conduct of the applicants in this respect; and, when there has been delay and negligence on the part of the parties seeking to be relieved, will compel them to pay any costs which may be thereby occasioned (*k*).

Costs of Execution Creditor and adverse Claimant.

Where the sheriff applies under the act, and no blame attaches, either to the execution creditor, the adverse claimant, or the sheriff, each party will have to pay his own costs (*l*). If the execution creditor fails to appear upon the rule, he will have to pay the adverse claimant's costs; but not those of the sheriff (*m*). So where the adverse claimant fails to appear, the

(*i*) Lambert *v.* Townsend, 1 Law J. (N. S.), Exch. 113.

(*k*) Id. and vide ante, p. 58.

(*l*) Murdock *v.* Taylor, 8 Scott, 604; Morland *v.* Chitty, 1 D. P. C. 520; Oram *v.* Sheldon, 3 D. P. C. 640; S. C. 1 Hodg. 92; and vide West *v.* Rotherham, 1 Hodg. 461.

(*m*) Beswick *v.* Thomas, 5 D. P. C. 458.

execution creditor will be entitled to his costs from such adverse claimant; but it seems the sheriff is not so entitled (*n*). If, however, the execution creditor afterwards appears, and opens the rule, the court will grant the sheriff the costs of his second appearance (*o*).

Where an issue is directed to try the right of adverse claimants, the court may adjudicate after the trial on the costs of appearing to the original rule and of the issue; and on a rule for the revival of the original rule, will order payment of the costs of the latter and of the issue, and will do whatever else is right between the parties (*p*). If, however, the application for the order is originally made to a judge at chambers, under 1 & 2 Vict. c. 45, s. 2, it seems that a judge at chambers only, and not the court, has authority as to the costs of the proceedings (*q*).

Costs will be awarded against the party who fails on the trial of the issue, and who therefore is considered to have originally brought the parties wrongfully before the court.

Where there was a seizure of the goods of a wrong person under a fi. fa., and an application for an order under the Interpleader Act was

(*n*) Bowdler *v.* Smith, 1 D. P. C. 417; and vide Bryant *v.* Ikey, 1 D. P. C. 428.

(*o*) Bryant *v.* Ikey, 1 D. P. C. 428.

(*p*) Seaward *v.* Williams, 1 D. P. C. 528.

(*q*) Scott *v.* Burgh, 9 Mee. & W. 478.

postponed at the request of the plaintiff and the sheriff, and then the execution was abandoned, it was held that the court had no power to grant the claimant his costs (*r*).

Where an issue was directed between the execution creditor and a claimant brought before the court under an interpleader rule, and the latter refused to proceed to trial, and abandoned his claim, it was held, that the claimant must pay costs up to the time when he abandoned the issue, and also the costs of the application by the plaintiff to obtain out of court the money paid in by the sheriff (*s*).

An interpleader rule was granted in Hilary term, but not decided until Easter, when the execution creditor consented to abandon his execution, and the court was subsequently applied to for the purpose of compelling him to pay the costs of the rule occasioned in consequence of his not having earlier abandoned the execution, but the application was refused (*t*).

It has been before observed, that when the issue has been tried, the unsuccessful party is liable for the costs (*u*); but where the sheriff's

(*r*) Swaine *v.* Spencer, 9 D. P. C. 347; 5 Jur. 319, B. C.

(*s*) Wills *v.* Hopkins, Bragg *v.* Hopkins, 3 D. P. C. 346.

(*t*) Edmonds *v.* Fletcher, Will. Woll. & D. 188.

(*u*) Ante, p. 70; and vide Bowen *v.* Bramidge, 2 Dowl. 213; Armitage *v.* Foster, 1 H. & W. 208.

rule under the act is silent as to costs, and the claimant does not appear, the court will not, on disposing of the rule at once, order the claimant to pay costs, but will make an order conditional upon him to do so in case he does not show cause within a certain period (*x*).

It was said by Coleridge, J., in giving his judgment in Shuttleworth *v.* Clark: "In the "several cases cited, it is rather singular that "the court does not appear to have adverted to "the terms of the section in question (sect. 3); "and it appears to have been considered as "perfectly clear that the court had a general "discretion as to costs to be paid by the claim- "ant. But the words of the section are, after "speaking of the nonappearance of the third "party to maintain or relinquish his claim, '*it* "*shall be lawful for the court or judge there-* "*upon to make such order between such defen-* "*dant and the plaintiff as to costs and other* "*matters as may appear just and reasonable.*' "The power to give costs, therefore, is confined "to matters between the plaintiff and the de- "fendant. It is curious that those words of "the statute have not been adverted to in the

(*x*) Shuttleworth *v.* Clark, 4 D. P. C. 561; and vide Bowdler *v.* Smith, 1 D. P. C. 417; Perkins *v.* Burton, 2 D. P. C. 108.

" cases decided on it; but I think I am bound " by the authority of those cases as to the power " of the court to give costs as against the claim- " ant."

Goods were seized under a fi. fa., and while the sheriff was in possession the brother of the defendant claimed them Application was subsequently made, under the act, by the sheriff, to a judge at chambers. The plaintiff and the claimant accordingly attended, and previously to going before the judge, the plaintiff and sheriff's agent requested time to inquire into the validity of the claim set up. The inquiries afterwards made proved satisfactory, whereupon the plaintiff abandoned his execution, and the claimant took possession of the goods. The latter subsequently moved for a rule, calling on the plaintiff to pay the costs which had been incurred in attending the summons, alleging the improper seizure made by the sheriff, by the direction of the plaintiff. It was held, that the rule could not be granted, as the case was on all fours with a party making an application to a judge at chambers, and then abandoning it, without any order being made; but the court intimated that there was a ground of action against the sheriff for the wrongful seizure, and

also against the plaintiff in the action, if he could, in any way, be connected with the sheriff(*z*).

Costs and Expenses of Sheriff.

The courts very early came to the resolution of not allowing the sheriff his costs of applying under the Interpleader Act, because it was considered that the act conferred sufficient benefit upon him, by relieving him from a liability cast upon him by law (*a*); and this rule has prevailed, even where the claimant, upon whose notice the sheriff acted, failed to appear to substantiate his claim (*b*). But, where the application was rendered necessary by gross misconduct on the part of the claimant, the sheriff was allowed his costs (*c*).

The sheriff having levied, and afterwards

(*z*) Swaine *v.* Spencer, 9 D. P. C. 347. Reference was made in this case to Beswick *v.* Thomas, 5 D. P. C. 458; Bryant *v.* Ikey, 1 D. P. C. 428.

(*a*) Barker *v.* Dynes, 1 D. P. C. 169; Bryant *v.* Ikey, id. 428; Field *v.* Cope, id. 567; 2 C. & J. 480, S. C.; Bowdler *v.* Smith, 1 Dowl. 417; Beswick *v.* Thomas, 5 Dowl. 458; King *v.* Cooke, 1 M'Clel. & Y. 198; Armitage *v.* Foster, 1 H. & W. 208.

(*b*) Oram *v.* Sheldon, 3 D. P. C. 640; S. C. 1 Hodg. 92; West *v.* Rotherham, 1 Hodg. 461; 2 Bing. N. C. 527; 2 Scott, 802; Staley *v.* Bedwell, 2 P. & D. 309; Perkins *v.* Burton, 2 D. P. C. 108.

(*c*) Thompson *v.* Sheddon, 1 Sc. 697.

being served with notice of a claim to the goods, a judge's order was obtained, directing the claimant to pay the amount of the debt into court, to abide the event of an issue, in which the claimant was to be plaintiff, and the execution creditor the defendant, all proceedings to be stayed, and costs to await the order of the court. The money was not paid in, nor were any proceedings taken under the order, an arrangement having been subsequently made between the parties. Application was afterwards made, that the sheriff might be paid the costs of attending upon the summons, &c., by the claimant of the goods, but was refused, on the ground that there was not any thing to show that the conduct of the party was vexatious (*d*).

Where, on a rule obtained by the sheriff, neither the plaintiff nor claimant appears, the court will order the sheriff to sell so much of the goods as will amount to the sheriff's poundage and expenses of sale (subject to the opinion of the Master), and to abandon the remainder of the goods seized; and will bar the execution creditor and claimant from any proceedings against the sheriff, who will be discharged (*e*).

(*d*) Cox *v.* Fenn, 7 D. P. C. 50.

(*e*) Eveleigh *v.* Salsbury, 3 Bing. N. C. 298; 5 D. P. C. 369.

So, where the sheriff has obtained an interpleader rule, and the execution creditor does not appear, the sheriff will, upon obtaining another rule for leave to withdraw, be permitted to do so, but will not be allowed his costs of keeping possession after the notice of the adverse claim (*f*).

A claimant, after issue directed on an application under the act, abandoning his claim, the sheriff is entitled to be paid, by such claimant, his costs which have been incurred subsequently to the order of the court which directed the issue to be tried, but not the costs occasioned by the previous application of the sheriff; because the latter is looked upon as favoured, by being allowed to make the application, and the claimant will also be compelled to pay the expense of applying for the rule calling on him to pay costs; and this, although no previous application had been made to him for them (*g*).

In some cases the sheriff will be allowed his costs of keeping possession after an application has been made to the court, and an order of reference made thereon, until the matter in question is decided; since it is for the benefit of both parties, and not in furtherance of his duty;

(*f*) Field *v.* Cope, 1 D. P. C. 567.
(*g*) Scales *v.* Sargenson, 4 D. P. C. 231.

and this, although it appears, on the trial of the issue, that the sale was wrongful (*h*).

And where a claim was made by one on behalf of another to goods seized in execution by the sheriff, and upon a rule obtained, neither the agent nor the claimants appeared to show cause, it was held by the Court of Exchequer, that the execution creditor was not entitled to receive his costs from the sheriff; but the rule was made absolute as to barring the claim of the adverse claimant, and was enlarged for the agent or clerk to show cause, why they or one of them should not pay the sheriff his costs, and also those of the execution creditor (*i*). And if the agent only appears, and the claim which he has made on behalf of another is not well founded, he will be made to pay the costs of the application (*k*).

Where an execution creditor applied under the act, and arranged with the claimant that the sheriff should sell the goods, and that their produce should abide the event of an issue, but subsequently abandoned his claim, the court

(*h*) Underden *v.* Burgess, 4 D. P. C. 104; and vide Bland *v.* Delano, 6 Dowl. 293; Dabbs *v.* Humphries, 3 Dowl. 377; 1 Hodges, 4; 1 Scott, 325; 1 Bing. N. C. 412, S. C.

(*i*) Philby *v.* C. Ikey, 2 D. P. C. 222.

(*k*) Lewis *v.* Eicke, 2 D. P. C. 337.

compelled him to pay the sheriff the costs of selling the goods (*l*).

Where the landlord has a claim for rent, and gives notice in proper time, the sheriff ought to pay him, otherwise the court will make the sheriff pay the costs of his appearance (*m*). For it is the duty of the sheriff to inquire whether rent be due, and if it is, to satisfy it (*n*).

The sheriff must pay the full proceeds of the execution into court, and will not be allowed his poundage in the first instance, as his right to that must depend upon the legality of the seizure (*o*).

Where a claimant had been summoned before a judge at chambers, upon an application on behalf of the sheriff, and objected to submit the case to the judge, upon the ground that he had no jurisdiction at chambers under the 6th section, and the sheriff subsequently moved the court for the costs of applying at chambers, they were refused; the court saying, that the claimant was not bound to adopt a course to which the law did not require he should assent (*p*).

(*l*) Dabbs *v.* Humphries, 3 Dowl. 377; and vide Underden *v.* Burgess, 4 Dowl. 104; Armitage *v.* Foster, 1 H. & W. 208.

(*m*) Clarke *v.* Lord, 2 D. P. C. 55.

(*n*) Haythorn *v.* Bush, 2 D. P. C. 641.

(*o*) Barker *v.* Dines, 1 Dowl. 169.

(*p*) Clark *v.* Chetwode, 4 D. P. C. 635; but now see 1 & 2 Vict. c. 45, s. 2.

Where the sheriff has seized goods in execution, and the same are claimed, and he delivers up a portion to the claimant, he precludes himself from the protection of the act, and his application will, under such circumstances, be discharged with costs (*q*).

In one case, where the order for interpleading was amended, the sheriff was disallowed his costs (*r*). But, where the rule called on the assignees of a bankrupt, who were claimants under a fiat which (subsequently to their notice of claim to interplead) was superseded, it was held that the bankruptcy being put an end to, there was an end of the assignees also. Yet the court refused to make the sheriff pay the costs of the assignees' appearance, saying, that the sheriff had acted fairly, and the assignees having been called upon in the character of assignees only, and that office having been put an end to by the supersedeas, they had no *locus standi* (*s*).

Where a sheriff is relieved under the act, and an issue is directed, the court may adjudicate, after the trial, on the costs of the application by the sheriff, and of the issue (*t*).

(*q*) Braine *v.* Hunt, 2 D. P. C. 391.

(*r*) Gilliard *v.* Cave, 8 Scott, 511.

(*s*) Clarke *v.* Lord, 2 D. P. C. 55. *Quære*, whether the courts independently of the statute have power to visit parties with costs for vexatious conduct.

(*t*) Seaward *v.* Williams, 1 D. P. C. 528; and vide ante, p. 35.

CHAPTER IV.

Evidence on Trial of Feigned Issue.—Entering Proceedings, &c.

It is not requisite to say much in this treatise as to the evidence which is admissible upon the trial of a feigned issue under the act, the cases being very few in which any deviation from the general rules of evidence has taken place; and no doubt the courts will, at all times, feel reluctant to depart from the strict line of proof, unless the justice of the case imperatively demands it.

In one case the plaintiff was an execution creditor. The defendants were trustees under a marriage settlement, whereby they covenanted to pay the interest arising from certain monies, to the separate use of the wife of the party against whom the execution had been obtained. With a portion of the money so paid over, the wife purchased clothes, which were taken in execution on a judgment against her husband. An issue was directed to try whether the clothes in question were the property of the husband. On the trial, evidence was tendered on the part

of the defendants, to show that the husband had been a bankrupt a second time, and had not paid fifteen shillings in the pound, and that therefore the property could not be in him, but in his assignees. The judge who presided refused to admit such evidence, on the ground that the issue being directed to try the defendant's right to the property, they could not be allowed to set up the *jus tertii*. On motion for a new trial, on the ground that the evidence was improperly rejected, the court held the evidence of the title of a third party properly excluded on the trial; and it was said that "an issue under the Inter-"pleader Act is solely for the purpose of in-"forming the conscience of the court, and the "only question here which could properly be "raised was, whether the trustees were entitled "to the property; consequently evidence could "not be received for the purpose of showing a "distinct right in a third party not before the "court (*a*)."

In an action for money had and received, brought in pursuance of an interpleader rule, it was held—1. That a special agreement might be given in evidence, which, in ordinary cases, would be admissible only under a special count. 2. That in such action the copy of an affidavit,

(*a*) Carne *v.* Brice and another, 8 D. P. C. 885.

sworn in the original action, but not filed or used, in which an agreement was set out, and which copy had been admitted to be correct, might be had recourse to on the trial as secondary evidence of such agreement, the original having been lost. 3. That in the absence of evidence to the contrary, the agreement so set out must be taken to have been duly stamped (*b*).

The rules, &c. must be entered up on a judgment roll according to their true date; and the courts have no power, in cases of accident, to order their entry *nunc pro tunc*, the 7th section of the act expressly stating how they shall be entered. Thus where an issue was directed under the act, and after trial but before judgment was entered up, the defendant died; on application being made to the court for a rule *nisi* to enter the verdict as of a preceding term, and to enter the rules on the record *nunc pro tunc*, it was held that the act precluded the request being granted (*c*).

The roll must be docketed (*d*) and carried into the treasury chamber in the same manner as judgment rolls usually are. When costs are

(*b*) Poole *v.* Goodwin, 5 Nev. & M. 466; 1 Harr. & N. 567.

(*c*) Lambirth *v.* Barrington, 4 D. P. C. 126.

(*d*) Vide form, Appendix, chap. IV. It would seem that these rules can now be enforced without being entered of record. Vide 1 & 2 Vict. c. 110, s. 18.

given, the party entitled to receive them must obtain an *allocatur* on the rule from the master, and a copy of the rule and affidavit must then be served on the opposite party, as in ordinary practice. After the taxation, notice in writing must be given of the amount of costs allowed, to the party ordered to pay the same, or to his attorney or agent; and if the costs are not paid within fifteen days after such notice, a *fi. fa.* or *ca. sa.* may be issued for the same (*e*); and the party entitled to such costs may, in addition to the costs allowed, levy a reasonable sum for the costs of the *fi. fa.*, but not for the costs of the *ca. sa* (*f*).

It seems that the fifteen days' notice must be given, whether the party, his attorney, or agent, attends the taxation or not; but it does not require to be served personally. The proper course is to indorse on the rule a notice that unless the amount allowed for costs be paid within fifteen days from the service thereof, execution will be issued (*g*).

The judgment upon a verdict obtained on a feigned issue under the act must also be entered

(*e*) Vide form, Appendix, chap. IV.

(*f*) Vide Chapman's second Addenda to his Practice, 162—166.

(*g*) Id.

up as section 7 directs; and if signed in the ordinary manner, it will be set aside by the court, on the ground of irregularity. The judgments, when entered of record, have the force of judgments, and writs of execution may issue on them (*h*).

(*h*) Dickinson v. Eyre, 7 D. P. C. 721.

APPENDIX.

CHAP. I.

An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims. —1 & 2 *Will.* 4, *c.* 58. [20th October, 1831.]

WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That upon application made by or on the behalf of any defendant sued in any of his majesty's courts of law at Westminster, or in the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, in any action of assumpsit, debt, detinue, or trover, such application being made after decla-

Upon application by a defendant in an action of assumpsit, &c. stating that the right in the subject matter is in a third party, the court may order such third party to appear and

maintain or relinquish his claim, and in the meantime stay proceedings in such action.

ration and before plea, by affidavit, or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court, or to pay or dispose of the subject-matter of the action in such manner as the court (or any judge thereof) may order or direct, it shall be lawful for the court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the mean time to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims, and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Judgment and decision to be final.

2. And be it further enacted, That the judgment in any such action or issue as may be di-

rected by the court or judge, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

If such third party shall not appear, &c., the court may bar his claim against the original defendant.

3. And be it further enacted, That if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving nevertheless the right or claim of such third party against the plaintiff; and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

Proviso as to orders made by a single judge.

4. Provided always, and be it further enacted, That no order shall be made in pursuance of this act by a single judge of the Court of Pleas of the said county palatine of Durham, who shall not also be a judge of one of the said courts at Westminster, and that every order to be made in pursuance of this act by a single judge not sitting in open court shall be liable to be rescinded or altered by the court, in like manner as other orders made by a single judge.

If a judge thinks the matter more fit for the decision of the court, he may refer it.

5. Provided also, and be it further enacted, That if upon application to a judge, in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the deci-

sion of the court, it shall be lawful for him to refer the matter to the court; and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a judge.

For relief of sheriffs and other officers in execution of process against goods and chattels.

6. And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the said courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officer made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of court, as well the party issuing such process as the party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as

shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

Rules, orders, &c. made in pursuance of this act may be entered of record and made evidence.

7. And be it further enacted, That all rules, orders, matters, and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by fieri facias or capias ad satisfaciendum, adapted to the case, together with the costs of such entry, and of the execution of it by fieri facias; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the court.

Costs.

Writs.

Sheriff's fees.

Upon any application under 1 Will.

8. And whereas by a certain act made and passed in the last session of parliament, intituled

4, c. 21, and this act, the court to exercise such powers and make such rules as are given by or mentioned in this act.

"An Act to improve the Proceedings in Prohibition, and on Writs of Mandamus," it was among other things enacted, that it should be lawful for the court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned to make rules and orders calling, not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or, in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as were or might be given or mentioned by or in any act passed or to be passed during that present session of parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims: And whereas no such act was passed during the then present session of parliament; be it therefore enacted, That upon any such application as is in the said act and hereinbefore mentioned, it shall be lawful for the court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present act.

An Act to extend the Jurisdiction of the Judges of the Superior Courts of Common Law; to amend Chapter Fifty-six of the First Year of Her present Majesty's Reign for regulating the Admission of Attornies; and to provide for the taking of Special Bail in the Absence of the Judges.— 1 & 2 *Vict. c.* 45. [27th July, 1838.]

Whereas by an act passed in the first year of the reign of his late majesty King William the Fourth, intituled "An Act for the more effectual Administration of Justice in England and Wales," it is enacted, that every judge of the superior courts of common law, to whatever court he may belong, shall be authorized to transact such business, at chambers or elsewhere, depending in any of the said courts, as relates to matters over which the said courts have common jurisdiction, and as may according to the course and practice of the court be transacted by a single judge: And whereas it is expedient that the authority of the judges of the said courts should be extended to any business which may be transacted by a single judge in any of the said courts as hereinafter mentioned: Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That every judge of the Courts of Queen's Bench, Common Pleas or Exchequer, shall have equal jurisdiction, power, and authority to transact out of court such business as may, according to the course and practice of the court, be so

11 Geo. 4 & 1 Will. 4, c. 70, s. 4.

Every judge of the courts at Westminster may transact such business as may now be transacted by

a single judge, although the courts have no common jurisdiction therein.

transacted by a single judge, relating to any suit or proceeding in either of the said Courts of Queen's Bench or Common Pleas, or on the common law or revenue side of the said Court of Exchequer, or relating to the granting writs of certiorari or habeas corpus, or the admitting prisoners on criminal charges to bail, or the issuing of extents or other process for the recovery of debts due to her majesty, or relating to any other matter or thing usually transacted out of court, although the said courts have no common jurisdiction therein, in like manner as if the judge transacting such business had been a judge of the court to which the same by law belongs.

Any judge may exercise such powers for the relief of sheriffs, &c. as may by virtue of 1 & 2 Will. 4, c. 58, s. 6, be exercised by the several courts.

2. And whereas by another act passed in the second year of the reign of his late majesty King William the Fourth, intituled, "An Act to enable the Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the subject of such Claims," provision is made for the relief of sheriffs and other officers concerned in the execution of process issued out of any of his majesty's courts of law at Westminster, or the Court of Common Pleas of the county palatine of Lancaster, or the Court of Pleas of the county palatine of Durham, against goods and chattels, by reason of claims made to such goods and chattels, but such relief can only be given by rule of court: And whereas it is expedient that a single judge should possess the power of giving relief in that respect; be it further enacted, That it shall be lawful for any judge of the said Courts of Queen's Bench, Common Pleas or Exchequer, with respect to any

such process issued out of any of those courts, or for any judge of the said Court of Common Pleas of the county palatine of Lancaster, or Court of Pleas of the county palatine of Durham, (being also a judge of one of the said three superior courts), with respect to process issued out of the said courts of Lancaster and Durham respectively, to exercise such powers and authorities for the relief and protection of the sheriff or other officer as may by virtue of the said last mentioned act be exercised by the said several courts respectively, and to make such order therein as shall appear to be just; and the costs of such proceeding shall be in the discretion of such judge.

After 1st November, 1838, any person admitted an attorney in one of the courts at Westminster may practise in any other court, upon signing the roll of such court.

3. And whereas by another act passed in the first year of the reign of her present majesty, intituled "An Act for amending the several Acts for the Regulation of Attornies and Solicitors," it is enacted, That any person who shall have been duly admitted an attorney in one of her majesty's courts of law at Westminster shall be at liberty to practise in any other of her majesty's courts of law at Westminster, although he may not have been duly admitted an attorney thereof; and that no person having been duly admitted an attorney or solicitor in any of her majesty's courts of law or equity at Westminster shall be prevented from recovering or receiving the amount of any costs, which would otherwise have been due to him, by reason of his not being admitted an attorney or solicitor of the court in which such costs shall have been incurred; pro-

vided always, that any attorney or solicitor practising in any court of law or equity shall be subject to the jurisdiction of such court as fully and completely to all intents and purposes whatever as if he had been duly admitted an attorney or solicitor of such court: And whereas it is expedient, in order to secure the jurisdiction of the said respective courts over the attornies practising therein, to have a record in each court of the admission of attornies; be it further enacted, That after the first day of November next, any person entitled to be admitted an attorney of any of the said courts at Westminster shall, after being sworn in and admitted as an attorney of any one of the said courts, be entitled to practise in any other of the said courts upon signing the roll of such court, and not otherwise, in like manner as if he had been sworn in and admitted an attorney of such court; provided that no additional fee besides those payable under the said last-mentioned act shall be demanded or paid, and that the fees payable for such admission shall be apportioned in such manner as the judges of the said courts, or any eight of them shall, by any rule or order made in term or vacation, direct and appoint.

Judges of courts at Westminster may issue commissions for taking special bail.

4. And whereas inconvenience and delay are sometimes experienced during the absence of the judges from town in vacation, in putting in and justifying special bail; be it further enacted, That the chief justice and other the justices of the Court of Queen's Bench for the time being, or any two of them, whereof the chief justice for

the time being to be one, for the said Court of Queen's Bench, and the chief justice of the Court of Common Pleas and other the justices there for the time being, or any two of them, whereof the chief justice of the same court to be one, for the said Court of Common Pleas, and also the chief baron and barons of the coif of the court of the Exchequer for the time being, or any two of them, whereof the chief baron for the time being to be one, for the said Court of Exchequer, may, by one or more commission or commissions under the several seals of the said respective courts, from time to time as need shall require, empower such persons not being attornies or solicitors, as they shall think fit and necessary, to take and receive during such time, in vacation only, as shall be specified in the commission or commissions, all and every such recognizance or recognizances of bail or bails as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered in any action or suit depending, or hereafter to be depending in the said respective courts, or any of them, in such manner and form, and by such recognizance or bail-piece as the justices and barons of the said respective courts have used to take the same; which said recognizance or recognizances of bail or bail-piece so taken as aforesaid shall be afterwards filed in the proper office or offices where the same are now filed, which recognizance of bail or bail-piece so taken and filed shall be of the like effect as if the same were taken before any of

the said justices and barons; and for the taking every such recognizance or recognizances of bail or bail-piece the person or persons so empowered shall receive only the like fee as is now payable upon taking and filing the recognizance or bail-piece, and no more.

Cognisors of bail may justify before such commissioners.

5. And be it further enacted, That the cognisor or cognisors of such bail or bails may justify him or themselves before any of the said commissioners during such time only, being in vacation, as shall be specified in their respective commissions; and the said commissioners are hereby empowered to examine the sureties on oath, and allow or reject them as shall seem fit.

CHAPTER II.

FORMS OF PROCEEDINGS UNDER THE INTERPLEADER ACT, 1 & 2 WILL. 4, C. 58, S. 1, IN THE CASE OF A STAKEHOLDER.

1. *Notice of Motion in an Action for the Recovery of Money or Goods.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
Between A. B. plaintiff,
and
C. D. defendant.

TAKE notice that this honourable court will be moved on —— the —— day of —— instant, or as soon after as counsel can be heard on the part of the abovenamed defendant, for a rule calling upon Mr. E. F. of ——, to appear before this honourable court and state the nature and particulars of his claim to the pipe of wine [*or* "sum of money" *as the case may be*] sought to be recovered from the defendant by the plaintiff in this action, and to maintain or relinquish his claim, and that in the meantime all further proceedings in this cause may be stayed. Dated this —— day of ——, 1842.

Yours, &c.
J. K.
Defendant's attorney.

To L. M.
Plaintiff's attorney, [*or* "agent."]

2. Affidavit of Service of Notice of Motion.

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
Between A. B. plaintiff,
and
C. D. defendant.

J. K. of ——, gentleman, attorney for the abovenamed defendant, maketh oath and saith, that he this deponent did on the —— day of ——, instant [*or* "last"] personally serve Mr. L. M., who acts as the attorney [*or* "agent"] for the abovenamed plaintiff, with a true copy of the notice hereunto annexed, apprising him that this honourable court would be moved [&c., *as in notice, or if not personally served, say,* "did on, &c. serve a true copy [&c. *as above*] on Mr. L. M. who acts as attorney [*or* "agent"] for the plaintiff in this cause, by leaving the same at the house [*or* "chambers"] of the said L. M. situate and being at No. ——, —— street, in the county of ——, with his clerk [*or* "servant"] there."]

Sworn, &c. J. K.

3. Affidavit in Support of the Application.

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
Between A. B. plaintiff,
and
C. D. defendant.

C. D. of ——, wharfinger, the abovenamed defendant, maketh oath and saith, that on or about the —— day of —— last, a pipe of wine [*or as the case may be*] was delivered by the abovenamed defendant to this deponent and deposited in this

deponent's custody and possession, and that he still holds the same, and this deponent further saith, that whilst he so had the said pipe of wine in his custody and possession, and before the commencement of this action, viz., on or about the —— day of —— last, he this deponent was served with the following notice by one E. F. of ——, that is to say [*here copy the notice, if any served on defendant by E. F., or if none, then state concisely the fact of his having claimed the goods*], and this deponent further saith that in consequence of such notice this deponent doth not know to whom the said pipe of wine belonged or belongs, or to whom he is liable for the same: and this deponent further saith that this action was commenced on the —— day of —— last, and the above-named plaintiff hath declared herein against this deponent in an action of ["trover," *or* "assumpsit," *or* "debt" *or* "detinue," *as the case may be*], for and in respect of this deponent's not having ["delivered the said pipe of wine to the above-named plaintiff"], and this deponent further saith that he has not pleaded to this action, and this deponent does not claim any interest whatever in the said ["pipe of wine"] or subject-matter in this action, and this deponent further saith that the right to the said ["pipe of wine"] and subject-matter of this action at the time of the commencement hereof, was and still is claimed by the said E. F., and is reasonably supposed by this deponent to belong to the said E. F., who this deponent expects will sue for the same as he [*here state why you expect he will do so, as from a threat or notice, or otherwise, or if he has already brought an*

action, state that fact], and this deponent further saith that he does not in any manner collude with the said E. F., and this deponent is ready to bring [*or* "pay"] into this honourable court, or dispose of the subject-matter of this action in such manner as this honourable court or any judge thereof may order or direct [*state any other facts, that would induce the court to grant the application*] (*a*).

Sworn, &c.

4. *Rule Nisi thereon.*

The —— day of ——, in the year of our Lord, 1842.

A. B. v. C. D. } Upon reading the affidavits of C. D. and J. K. it is ordered that the plaintiff, upon notice of this rule to be given to his attorney, and E. F. in the said affidavit named, upon notice of this rule to be given to him [*or* "to his attorney," *as the case may be*], shall upon the —— day of —— instant show cause why they should not respectively appear before this court, and why the said E. F. should not state the nature and particulars of his claim to the subject-matter of this action, and maintain or relinquish such claim, and why the court should not make such order thereon as to it shall seem fit, pursuant to the statute of the first and second years of the late king William the Fourth, c. 58, and why in the meantime all proceedings in this action should not be stayed.

Upon the motion of Mr. ——.

By the Court.

(*a*) This form of affidavit may be readily varied, so as to make it applicable to a money transaction, and the like remark applies to the subsequent forms in this chapter of the Appendix.

5. Rule making third Party (on his appearing) Defendant in the Action.

The —— day of —— A.D. 1842.

A. B. v. C. D. } Upon reading the rule made in this cause on the —— day of —— instant [*or* "last"] the affidavit of ——, and upon hearing Mr. —— of counsel for the plaintiff, Mr. —— of counsel for the defendant, and Mr. —— of counsel for E. F. in the said rule named: It is ordered that the said E. F. do make himself defendant in this action instead of the said now defendant ——, and by the consent of counsel for all the parties, it is ordered that, &c. [*the court will here order the subject-matter of the action to be sold, brought into court, paid, or disposed of in such manner as they think fit, and will also make an order as to costs*].

By the Court.

6. Affidavit of Service of Rule Nisi, in order to obtain Rule barring Claim of third Party, in case he does not appear.

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

Between A. B. plaintiff,

and

C. D. defendant.

I. K. of ——, attorney for the defendant above-named, maketh oath and saith, that on the —— day of —— instant [*or* "last,"] he this deponent did ["personally"] serve —— with a true copy of the

rule hereunto annexed [*annex it, and if it has not been personally served omit the word* "personally" *and state the mode of service thus:* "by leaving the same for him with a son or servant of the said —— then residing at the dwelling house or chambers of the said —— situate and being," &c.]

Sworn, &c.

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7. Rule barring Claim of third Party.

The —— day of —— A. D. ——

A. B. *v.* C. D. } Upon reading the rule made in this cause on —— the —— day of instant [*or* "last"] and the affidavit of C. D. the above named defendant, the affidavit of J. K., and upon hearing Mr. —— of counsel for the plaintiff, and Mr. —— of counsel for the defendant, and E. F. the party named in such rule and affidavits respectively, not appearing upon the said rule to maintain or relinquish his claim as therein ordered, and having been duly served with such rule: It is ordered and declared by this court that the said E. F. and all persons claiming from or under him shall be and they are hereby for ever barred from prosecuting his claim, mentioned and referred to in the said rule and affidavit of the said C. D. against the said C. D. his executors or administrators) hereby saving nevertheless the said E. F.'s right or claim against the plaintiff): and it is further ordered, [*the court will here make such further order between the defendant and plaintiff as to costs and other matters as they may think fit.*]

By the Court.

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8. *Affidavit on Application under the Act to a Judge at Chambers by Auctioneer sued for a Deposit.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
Between A. B. plaintiff,
and
C. D. defendant.

C. D. of —— auctioneer, the above-named defendant, maketh oath and saith, that he this deponent was before the commencement of this suit retained and employed by one E. F. to sell by public auction certain leasehold property, consisting of a dwelling house and premises [*describe them concisely*], and that he this deponent, in pursuance of such retainer and employment, did on the —— day of —— last put up and expose the said property to sale by public auction, and that on such exposure to sale the said A. B., the plaintiff in this suit, by G. H. his agent, became and was the purchaser of the said property and did deposit by such agent in the hands of this deponent as such auctioneer as aforesaid, the sum of 50*l.* as a deposit and in part payment of the purchase money of the said property, and this deponent further saith that the said A. B., the purchaser of the said property, objects to the title thereof, and refuses to complete the said purchase, and hath brought his action against this deponent to recover back the said sum of 50*l.* so deposited with him as aforesaid, [*here state the nature of the action brought, that plaintiff has declared therein, and that defendant has not pleaded thereto,*] and this deponent further saith that he this deponent does not claim any

interest in the said sum of *50l.* so being the subject-matter of this suit as aforesaid or any part thereof, but that the right thereto is claimed by the said E. F., the vendor of the said property, who has threatened to sue, and who this deponent expects will sue, this deponent for the same, and this deponent further saith that he does not in any manner collude with the said E. F. but is ready to bring the said sum of *50l.* into court, or to pay or dispose of the same in such manner as this court or any judge thereof may order or direct.

Sworn, &c. C. D.

9. *Summons to show Cause thereon.*

A. B. v. C. D. } Let the plaintiff's attorney or agent and also Mr. E. F. his attorney or agent attend me at my chambers in Rolls' Gardens, Chancery Lane, on —— next at —— of the clock, in the —— noon, to show cause why an order should not be made for the said E. F. to appear and state the nature and particulars of his claim to the sum of *50l.* the subject-matter of this action, and maintain or relinquish such claim; and why the defendant should not be at liberty to pay the said sum of *50l.* into court; why it should not be referred to the master [*or* "prothonotaries"] to tax the defendant's costs of this action; and why such costs when taxed should not be paid to the defendant out of the said sum; why all further proceedings in this action should not be stayed; and why the said E. F. should not be

restrained from commencing proceedings against the defendant in respect of the said sum of 50*l.*

Dated this —— day of —— 184—

—— [*Judge's name.*]

10. *Judge's Order thereon.*

A. B. } Upon hearing the attornies or agents on
v. } both sides and upon reading the affidavit
C. D. } of C. D. I do order that the defendant C. D. do retain the sum of 50*l.* in his hands for a week: also that Mr. E. F. have a week's time to consider whether he will defend the action or not; if he do not resolve so to do, the money to be paid over to the plaintiff at that time with costs, to be taxed and paid by the present defendant: and also that Mr. E. F. be restrained from proceeding against the defendant C. D.: and also that if Mr. E. F. comes in to defend, he be made defendant instead of the present defendant C. D., and that the plaintiff be at liberty to amend his declaration: and the present defendant, C. D. to have his costs from the party ultimately unsuccessful.

Dated this —— day of —— 184—

—— [*Judge's name,*]

11. *Feigned Issue as to the Receipt Money.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

The —— day of —— A.D. 1842.

To wit, A. B. by L. M. his attorney, complains of

E. F. [*it is not necessary that the defendant was sued by any writ*(*a*)]: For that whereas heretofore, to wit, on —— a certain discourse was had and moved by and between the plaintiff and the defendant; and in that discourse a certain question then arose whether the said defendant did on the —— day of —— or at any other time receive for the use or on account of P. O. deceased, the sum of 100*l.* or any other and what sum of money: and thereupon heretofore, to wit, on the said ——, in consideration that the plaintiff, at the special instance and request of the said defendant, had then paid to him the said defendant the sum of 5*l.* of lawful money of Great Britain, he the said defendant then promised the said plaintiff to pay him the sum of 10*l.* of like lawful money, in case he the said defendant did on the said —— or at any other time receive for the use or on account of the said P. O. deceased, the said sum of 100*l.* or any other sum of money whatever. And the said A. B. in fact saith that the said —— did on the said —— receive for the use and on the account of the said P. O. deceased, the said sum of 100*l.* whereof the said defendant afterwards, to wit, on the same day and year first above-mentioned, had notice, nevertheless the said defendant, not regarding his said promise, hath not as yet paid the said sum of 10*l.* or any part thereof to the said plaintiff (although often requested so to do), but he to do this hath hitherto wholly refused and still doth refuse, to the damage of the said plaintiff of £——, and therefore he brings suit, &c.

(*b*) Chitty's Practical Forms, 295.

Plea.

And the said defendant, by —— his attorney, says that though true it is that such a discourse was had and moved by and between the said plaintiff and the said defendant, and that such question did arise, and he the said C. D. did promise in manner and form as the said plaintiff hath above in his said declaration in that behalf alleged: For plea in this behalf the said defendant saith that he the said defendant did not on the said —— or at any other time receive for the use or account of the said P. O. the said sum of 100*l.* or any other snm of money whatsoever, in manner and form as the said plaintiff hath above in his said declaration in that behalf alleged, and of this he the said defendant puts himself upon the country; and the said plaintiff doth the like.

Award of the Venire.

Thereupon the sheriff is [*or* "sheriffs are"] commanded that he [*or* "they"] cause to come here on the —— day of —— twelve &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

12. *Feigned Issue, to try the Right to a Pipe of Wine, &c.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
The —— day of ——, A.D. 18—.

To wit, E. F. by ——, his attorney, complains of A. B. who has been summoned by virtue of a

writ issued out of the court of our lady the Queen, before the Queen herself [*or as the case may be*] at Westminster, on the —— day of ——, in the year 1842, to answer the said E. F. in an action on promises, for that whereas heretofore, to wit, on —— day of —— A.D. 18— a certain discourse was had and moved between the plaintiff and the defendant, wherein a certain question then arose whether a certain pipe of wine [*here state any matter of description which may be requisite to identify the property*] which on the —— day of ——, A. D. 18— was in the custody and possession of one C. D., was on the day and year last aforesaid the property of the said plaintiff: and in that discourse the plaintiff asserted and affirmed that the said pipe of wine [*or as the case may be*] was on the said —— day of ——, A.D. 18—, the property of him the said plaintiff; which assertion and affirmation of the plaintiff the defendant then contradicted and denied, and then asserted and affirmed the contrary thereof: and thereupon afterwards, to wit, on the day and year aforesaid, in consideration that the plaintiff, at the request of the defendant, had then paid to the defendant the sum of £5, he, the defendant, promised the plaintiff to pay him the sum of £10, [*or*, "the value of the said pipe of wine," *&c.*] if the said pipe of wine [*or as the case may be*] was on the —— day of ——, in the year 18—, the property of him the said plaintiff: and the plaintiff in fact says that the said pipe of wine [*or as the case may be*] was on the —— day of ——, in the year 18—, the property of him the plaintiff; whereof the defendant afterwards, to wit, on the day and year aforesaid

had notice whereby he the defendant then became liable to pay and ought to have paid to the plaintiff the said sum of £10 [*or as aforesaid*]: yet the defendant, not regarding his said promise, hath not as yet paid the said sum of £10 [*or as aforesaid*], or any part thereof, to the plaintiff, (although often requested so to do,) but hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the plaintiff of £——, and therefore he brings suit, &c.

Plea.

And the defendant on the —— day of ——, A. D. 18—, by ——, his attorney, says that the said pipe of wine [*as the case may be*] in the said declaration mentioned, was not on the said —— day of ——, A. D. 18—, the property of the said plaintiff, in manner and form as the plaintiff hath above in that behalf alleged, and of this the defendant puts himself upon the country, &c.

Award of the Venire.

Thereupon the sheriff is commanded that he cause to come here on ——, twelve, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

CHAPTER III.

FORMS OF PROCEEDINGS UNDER THE SIXTH SECTION OF THE INTERPLEADER ACT (1 & 2 WILL. 4, c. 58,) IN THE CASE OF SHERIFFS OR OTHER OFFICERS.

1. *Notice of Motion.*

See forms, *ante*, App. cap. 2, ss. 1 and 2.

2. *Affidavit to support Application on Behalf of Sheriff for Relief from adverse Claim.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
Between A. B. plaintiff,
and
C. D. defendant.

S. H. of ——, in the county of ——, officer to the sheriff of ——, maketh oath and saith, that under and by virtue of a writ of fi. fa., which appeared to this deponent to have been regularly issued out of this honourable court in this cause directed to the said sheriff, commanding him that he should cause to be levied of the goods and chattels of the abovenamed defendant a certain debt of 50*l.*, which the abovenamed plaintiff had recovered against the said defendant in this honourable court, returnable immediately after the execution thereof

[*or* " on ——," *as the case may be,*] and indorsed to levy the whole, besides legal charges, and also of a warrant of the said sheriff, granted on the said writ, he this deponent did on the —— day of —— instant take possession of certain goods and chattels in the dwelling-house of the abovenamed defendant situated at —— in the same county, and that the said goods and chattels still remain in the custody or possession of the said sheriff: and this deponent further saith, that on or about the —— day of —— instant, he this deponent was served with a written notice, of which the following is a copy [*here copy the notice served by the third person upon the sheriff of his claim, if such notice was given*]: and this deponent further saith that a writ has since been issued and served by L. M. of —— as the attorney for one E. F. of —— [*the claimant*] against the said sheriff, for the purpose as he this deponent verily believes of commencing an action against him for the said seizure of the said goods and chattels; and that the said sheriff is likely to be put to great hazard and expense in defending the said action. And this deponent further saith, that this application is made to this honourable court solely on behalf of this deponent as officer to the said sheriff at his this deponent's own expense and for his indemnity only (*a*).

Sworn, &c. G. H.

(*a*) If any other facts can be suggested likely to afford the Court proper materials for coming to a decision as to the necessity for its interference, they should be concisely stated in the first instance, as no supplemental affidavit can be used. *Vide ante*, p. 62.

3. Rule Nisi thereon.

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
The —— day of —— A. D. ——.

A. B. v. C. D. } Upon reading the affidavit of G. H. it is ordered, that the plaintiff, upon notice of this rule, to be given to his attorney, and E. F. in the said affidavit named, upon notice of this rule, to be given to him or his attorney, shall upon —— the —— day of —— instant, show cause why they should not respectively appear before the court and maintain or relinquish their respective claims to the goods taken in execution in this cause, and why the court should not make such order thereon as to them shall seem fit, pursuant to the statute of the first and second years of his late majesty king William the Fourth, cap. 58, and that in the meantime proceedings be stayed.

Upon the motion of Mr. ——.

By the Court.

4. Rule substituting Plaintiff in original Action for the Sheriff in the Action by the adverse Claimant.

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
The —— day of —— A. D. ——.

A. B. v. C. D. } Upon reading the rule made in this cause on —— the —— day of —— in this term, the affidavit of S. H., the affidavit of E. F., and upon hearing Mr. —— of counsel for the plaintiff, Mr. —— of counsel for E. F. in the said rule named, and Mr. —— of counsel for the

sheriff of the county of ——, it is ordered that the plaintiff in this cause be substituted as defendant instead of the said sheriff, in the action brought against the said sheriff by the said E. F. in respect of the execution in this cause: and it is further ordered that the said sheriff do sell the goods taken in execution as aforesaid, and pay the net proceeds thereof into court (after deducting the poundage) to abide the event of the said action, and that the said sheriff do pay the said poundage over to the said E. F. if he shall succeed in the said action.

By the Court.

5. Rule Nisi on Claim by Assignees of a Bankrupt.

In the Queen's Bench.

The —— day of —— A. D. ——.

A. B. *v.* C. D. } Upon reading the affidavit of G. H. it is ordered that the plaintiff, upon notice of this rule, to be given to his attorney and Messrs. —— and ——, in the said affidavit named, upon notice of this rule, to be given to their attorney, shall, upon —— the —— day of —— instant [*or* "next"], show cause why, upon payment into court by the sheriff of the county of —— of the money arising from the execution under the writ of fieri facias issued in this cause, all proceedings against the said sheriff should not be stayed until the further order of this court, and why such order should not be made touching the proceeds of the said execution as this court shall think fit, pursuant to the statute of the first and second of her present ma-

jesty, cap. 58, and that in the meantime proceedings be stayed.

Upon the motion of Mr. ——.

By the Court.

6. *Rule Absolute, that the Money be paid into Court, with Liberty for the Assignees to bring an Action against Plaintiff.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

A. B. v. C. D. } Upon reading the rule made in this cause on —— the —— day of —— instant, the affidavit of the defendant, the affidavit of —— and the paper writing thereto annexed; and upon hearing Mr. —— of counsel for the plaintiff, Mr. —— of counsel for Messrs. —— and —— in the said rule named, and Mr. —— of counsel for the sheriff of the county of ——, it is ordered that the said sheriff do pay into court the money arising from the execution under the writ of fieri facias issued in this cause, and that all further proceedings against the said sheriff be stayed until the further order of this court, and the money to remain in court until further order of the court: and it is further ordered that the assignees of the defendant, under the commission of bankruptcy against him, be at liberty to bring an action against the plaintiff in this cause for the purpose of trying the title to the proceeds of the said execution.

By the Court.

7. *Rule Nisi on Claim by Landlord for Rent.*

The —— day of —— A.D. 1842.

A. B. v. C. D. } Upon reading the affidavit of C. D. and the declaration in this cause, it is ordered that the plaintiff, upon notice of this rule to be given to his attorney, and E. F. in the said affidavit named, upon notice of this rule to be given to him or his attorney, shall, upon the —— day of —— next, show cause why the said E. F. should not appear before this court and state the nature and particulars of his claim and maintain or relinquish the same, or why the court should not make such order respecting the same as to them shall seem fit, pursuant to the statute of the first and second years of her present majesty, cap. 58.

Upon the motion of Mr. ——.

By the Court.

8. *Rule Absolute that the Landlord be barred of his Claim against the Sheriff, reserving his Right against the Plaintiff.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

The —— day of —— A.D. 1842.

A. B. v. C. D. } Upon reading the rule made in this cause on —— the —— day of —— in this term, and upon hearing Mr. —— of counsel for E. F. in the said rule named, and Mr. —— of counsel for the plaintiff and defendant, it is ordered that the said E. F. and all persons claiming by, from, and under him, be barred from prosecuting his and their claim against the defendant, his

executors and administrators, for the rent claimed in this action, saving nevertheless the right of the said E. F. against the plaintiff.

By the Court.

9. *Rule Nisi upon a Claim of the Proceeds of Goods by the Assignee of Defendant after Action brought by him against the Sheriff.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
The —— day of —— A. D. 1842.

A. assignee, &c. *v.* D. sheriff of, &c. } Upon reading the affidavit of —— gentleman, it is ordered that the plaintiff and E. F., the execution creditor, in the said affidavit named, upon notice of this rule to be given to their respective attornies, shall, upon —— the —— day of —— instant [*or* "next"], show cause why they, the said plaintiff and E. F., should not appear before this court and state the nature and particulars of their respective claims to the proceeds of the goods and chattels seized by the defendant under the writ of fieri facias in the said affidavit mentioned, and maintain or relinquish the same, and why the court should not make such order respecting the same as to them shall seem fit, pursuant to the statute of the first and second years of the late King William the Fourth, cap. 58, and that in the meantime proceedings be stayed.

Upon the motion of Mr. ——.

By the Court.

10. *Rule Absolute, on Non-appearance of Execution Creditor, that he be barred of his Claim, and the Money paid out of Court to the Assignee with the Costs of the Application.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
The —— day of —— A. D. 1842.

A. assignee, &c. *v.* B. sheriff of, &c. } Upon reading the rule made in this cause on —— the —— day of —— in this term, the affidavit of ——, the affidavit of the plaintiff [*the assignee*], and upon hearing Mr. —— of counsel for the plaintiff, and Mr. —— of counsel for the defendant [*the sheriff*], and no cause being shown to the contrary by E. F. [*the execution creditor*] in the said rule named, it is ordered that the said E. F. be barred of his claim to the proceeds of the execution issued against G. H. [*the defendant in the execution*] at the suit of the said E. F., and that the money paid into court by the defendant in this action, in the cause of E. F. against G. H., in respect of the said execution, be forthwith paid out of court to the plaintiff or his attorney, and that the said defendant do also pay over to the plaintiff the sum retained by him for poundage in respect thereof, and it is referred to the master to tax the plaintiff his costs of this application, which costs, when taxed, shall be paid by the said E. F. to the plaintiff or his attorney.

By the Court.

11. *Form of Rule for the Relief of the Sheriff when the Assignees of the Defendant (a Bankrupt) claim Goods seized as against the Execution Creditor.*

Upon reading a rule made in this cause Monday, the —— November instant, the affidavit of H. B. gent., and the affidavit of A. D. gent., and upon hearing counsel as well for the sheriff of the county of —— as for the plaintiff, it is ordered that the said sheriff do pay over to the plaintiff the money levied under the writ of fi. fa. issued in this cause, minus the poundage, upon the plaintiff's giving security by bond, or otherwise, to the satisfaction of one of the masters [*or* "prothonotaries"] of this court, that he the said plaintiff will pay over such sum of money to the assignees when chosen under the commission of bankruptcy issued against the defendant, provided such assignees shall be found entitled to the same; or in case the said plaintiff shall not give such security as shall be satisfactory to the said master [*or* "prothonotary"], then that the said sheriff do pay the said sum of money into the hands of the masters [*or* "prothonotaries"] of this court, to abide the event of the question as to who is entitled to the same. And it is further ordered, that the question, as to who is entitled to the said sum of money, be tried by a feigned issue, in which the said assignees of the defendant are to be plaintiffs, and the said plaintiffs are to be defendants, and that the questions of poundage and costs are to be reserved until the event of such issue. And it is further ordered, that all further

proceedings against the said sheriff, for not returning the said writ of fi. fa., be stayed until the further order of this court.

By the Court.

12. *Affidavit of Service of Rule.*

See form, *ante*, App. cap. 2, s. 6.

13. *Summons at instance of Sheriff, calling on Plaintiff and Claimant to appear and maintain, &c. their Claims on Goods seized under an Execution.*

A. B. v. C. D. } Let the plaintiff and Mr. E. F., [*the claimant,*] their attornies or agents, attend me at my chambers in Rolls' Garden, Chancery Lane, London, to-morrow at —— o'clock in the —— noon, to show cause why they should not appear and state the nature and particulars of their respective claims to the goods and chattels seized by the sheriff of —— under the writ of fieri facias issued in this cause, and maintain or relinquish the same, and abide by such order as may be made herein, and why in the meantime all further proceedings should not be stayed.

[*Judge's name.*]

14. *Feigned Issue to try Right to Goods seized in Execution.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

On the 1st day of January, A. D. 1842.

Middlesex, *to wit.* } E. F. by —— his attorney, complains of A. B., who has been sum-

moned to answer the said E. F. in an action on promises: For that whereas before the making of the defendant's promise hereinafter mentioned (to wit) on the 1st day of November, A. D. 1841, the sheriff of the county of Middlesex did seize and take in execution divers goods and chattels under and by virtue of a certain writ of fieri facias, directed to the said sheriff, before then sued out of the Court of Queen's Bench [*or* "Common Pleas," *or* "Exchequer of Pleas,"] at Westminster, for having execution of a certain judgment before then obtained in that court by the now defendant in an action at his suit against one C. D. And thereupon, heretofore, (to wit) on the 5th day of November, in the said year of our Lord 1841, a certain discourse was had and moved by and between the plaintiff and the defendant, wherein a certain question then arose (that is to say) whether the said goods and chattels, or any part thereof, at the time of the seizure and taking of the same in execution as aforesaid, were the goods and chattels of the plaintiff, and in that discourse the said plaintiff asserted and affirmed that the said goods and chattels were, at the time of the said seizure and taking the same in execution as aforesaid, the goods and chattels of the plaintiff, which assertion and affirmation the defendant then denied, and then affirmed the contrary thereof. And thereupon, afterwards, to wit, on the day and year last aforesaid, in consideration that the plaintiff, at the request of the defendant, had then paid to the defendant the sum of 5*l.*, he the defendant then promised the plaintiff to pay him the sum of

10*l.*, if the said goods and chattels, or any part thereof, at the time of the said seizure and taking the same in execution as aforesaid, were the goods and chattels of him the said plaintiff, and the plaintiff in fact saith that the said goods and chattels, and every of them were, at the time of the said seizure and taking the same in execution as aforesaid, the goods and chattels of him the plaintiff, whereof the defendant aforesaid, to wit, on the day and year last aforesaid, had notice, whereby he the defendant then became liable to pay to the plaintiff the said sum of 10*l.* Yet the defendant hath not as yet paid the said sum of 10*l.*, or any part thereof to the plaintiff's damage of 10*l.*, and therefore he brings his suit, &c.

Plea.

And the defendant, on the 10th day of January, A. D. 1842, by —— his attorney, says that the said goods and chattels were not, nor were any part thereof, at the time of the seizure and taking the same in execution as aforesaid, the goods and chattels of the plaintiff in manner and form as the plaintiff hath above in that behalf alleged, and of this the defendant puts himself upon the country, &c. And the plaintiff doth the like.

Award of the Venire.

Thereupon the sheriff is commanded that he cause to come here forthwith twelve, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

15. *Another Form, in which the same Question may be raised.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]

On the 1st day of January, A. D. 1842.

Middlesex, *to wit.* } E. F. by —— his attorney, complains of A. B., who has been summoned to answer the said E. F. by virtue of a writ issued out of the court of our lady the queen before the queen herself [*or as the case may be*] at Westminster, on the 1st day of December, 1841, in an action on promises: For that whereas heretofore, to wit, on the 1st day of November, A. D. 1841, a certain writ of fieri facias was issued out of this honourable court [*or as the case may be,*] directed to the sheriff of Middlesex, whereby the said sheriff was commanded that [*here state the substance of the writ*]: By virtue of which writ the said sheriff afterwards, to wit, on the 10th day of November, in the said year of our Lord, 1841, seized and took in execution certain goods and chattels (to wit) [*set out a list of the goods seized*] as and for the goods and chattels of C. D. in the said writ of fieri facias named. And thereupon, heretofore, to wit, on the 12th day of November, in the said year 1841, a certain discourse was had and moved by and between the plaintiff and the defendant wherein a certain question then arose (that is to say) whether the said goods and chattels, or any part thereof, at the time of the seizure and taking of the same in execution as aforesaid, were the goods and chattels of the plaintiff, and in that discourse the plaintiff as-

serted and affirmed that the said goods and chattels were, at the time of the said seizure and taking the same in execution as aforesaid, the goods and chattels of the plaintiff, which assertion and affirmation of the plaintiff the defendant then contradicted and denied, and then asserted and affirmed the contrary thereof. And thereupon, afterwards, to wit, on the day and year aforesaid, in consideration that the plaintiff, at the request of the defendant, had then paid to the defendant the sum of *5l.* he the defendant promised the plaintiff to pay him the sum of 10*l.* [*or the issue may be framed so as to give the plaintiff the market value of the goods, or such of them as may be found to be his property*], if the said goods or any part thereof, at the time of the seizure and taking of the same in execution as aforesaid, were the goods and chattels of the plaintiff: and the plaintiff in fact says that the said goods and chattels and every of them were, at the time of the said seizure and taking the same in execution as aforesaid, the goods and chattels of him the plaintiff, whereof the defendant, afterwards, to wit, on the day and year aforesaid, had notice, whereby he the defendant then became liable to pay, and ought to have paid, to the plaintiff the said sum of 10*l.* [*or as the case may be*]; yet the defendant, not regarding his said promise, hath not as yet paid the said sum of 10*l.* [*or as above*], or any part thereof, to the plaintiff, although often requested so to do, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the plaintiff of £——, and therefore he brings his suit, &c.

Plea.

And on the —— day of —— A. D. 1842, the defendant, by —— his attorney, says that the said goods and chattels were not, nor were any part thereof, at the time of the seizing and taking the same in execution as aforesaid, the goods and chattels of the plaintiff in manner and form as the plaintiff hath above in that behalf alleged, and of this the defendant puts himself upon the country. And the plaintiff doth the like.

Award of the Venire.

Thereupon the sheriff is commanded that he cause to come here forthwith twelve, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

16. *Form of Feigned Issue to try Question as to Property seized in Execution between Assignees of a Bankrupt and Execution Creditor, where the Goods remain unsold.*

In the Q. B. [*or* "C. P." *or* "Exch. of Pleas."]
On the —— day of —— 1842.

Middlesex, *to wit.* } E. F. and G., assignees of the estate and effects of C. D., a bankrupt, according to the statutes in force concerning bankrupts, by —— their attorney, complain of A. B. [*execution creditor*] who has been summoned to answer the said E. F. and G., assignees as aforesaid, by virtue of a writ issued out of the court of our

lady the Queen, before the Queen herself, [*or as the case may be*] at Westminster, on the —— day of —— A. D. 1841, in an action on promises: For that whereas heretofore, to wit, on the —— day of —— A. D. 1841, a certain writ of fieri facias was issued out of this honourable court [*or as the case may be*], directed to the sheriff of Middlesex, whereby the said sheriff was commanded that [*here state the substance of the writ*]: By virtue of which writ the said sheriff afterwards, to wit, on the —— day of —— in the said year 1841, seized and took in execution certain goods and chattels (to wit) [*here set out a list of the goods seized*] as and for the goods and chattels of the said C. D. in the said writ of fieri facias mentioned. And thereupon, heretofore, to wit, on the —— day of —— in the year 1841, a certain discourse was had and moved by and between the plaintiffs (assignees as aforesaid) and the defendant, wherein a certain question then arose (that is to say) whether the said goods and chattels, or any part thereof, were on the —— day of —— 1841, [*date of order for feigned issue*] the goods and chattels of the plaintiffs, as assignees as aforesaid, and in that discourse the plaintiffs, assignees as aforesaid, asserted and affirmed that the said goods and chattels were, on the day and year last aforesaid, the goods and chattels of the plaintiffs, as assignees as aforesaid, which assertion and affirmation of the plaintiffs, the defendant then contradicted and denied, and then asserted and affirmed the contrary thereof. And thereupon, afterwards, to wit, on the —— in consideration that the plaintiffs, assignees

as aforesaid, at the request of the defendant, had then paid to the defendant the sum of 5*l.* he the defendant promised the plaintiffs, as assignees as aforesaid, to pay them the sum of 10*l.* [*or the issue may be framed so as to give the plaintiffs the market value of the goods, or such of them as may be found their property*], if the said goods and chattels, or any part thereof, were on the —— day of —— 1841, the goods and chattels of the plaintiffs as assignees as aforesaid: and the plaintiffs, assignees as aforesaid, in fact say that the said goods and chattels and every of them were, on the —— the goods and chattels of them the said plaintiffs, as assignees as aforesaid, whereof the defendant, afterwards, to wit, on the day and year last aforesaid, had notice, whereby he the defendant then became liable to pay, and ought to have paid, to the plaintiffs, assignees as aforesaid, the said sum of 10*l.* [*or as the case may be*]; yet the defendant, not regarding his said promise, hath not as yet paid the said sum of 10*l.* [*or as above*], or any part thereof, to the plaintiffs, assignees as aforesaid, although often requested so to do, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the plaintiffs, assignees as aforesaid, of £——, and therefore they bring suit, &c.

Plea.

And on the —— day of —— A.D. 1842, the defendant, by —— his attorney, says that the said goods and chattels were not, nor were any part thereof, on the —— day of —— the goods and

chattels of the plaintiffs, as assignees as aforesaid, in manner and form as the plaintiffs have on that behalf alleged, and of this the defendant puts himself upon the country, &c. And the plaintiffs do the like.

Award of the Venire.

Thereupon the sheriff is commanded that he cause to come here forthwith twelve, &c., by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

CHAPTER IV.

Forms of Entry of Rules, &c. of Record.

1. *Entry of Rules of Record in Queen's Bench after Declaration.*

As yet of —— term, [*the term in or as of which the entry is made,*] in the —— year of the reign of Queen Victoria. Witness Thomas Lord Denman.

Ellenborough.

Day of ——, A. D. 1842.

To wit, A. B., assignee of C., a bankrupt, according to the force, form, and effect of the statute concerning bankrupts, by L. M. his attorney, complains of D. late sheriff of the county of ——, who has been summoned to answer the said —— in an action on the case: for that whereas, &c. [*here copy the declaration to the end, proceeding as follows:*] and such proceedings were thereupon had, that afterwards, to wit, on —— day of ——, in the —— year of the reign of our lady the now Queen, a certain rule or order was made in the said cause upon the application of the said D. in and by the court of our said lady the Queen, before the Queen herself, upon reading the affidavit of ——, gentle-

man, whereby it was ordered that the plaintiff and E. F. in the said affidavit named, upon notice of that rule to be given to their respective attornies, should upon ——, the —— day of —— then instant, [*or* "next"] shew cause why they the said plaintiff and E. F. should not appear before that court, and state the nature and particulars of their respective claims to the proceeds of the goods and chattels seized by the defendant under the writ of fieri facias in the said affidavit mentioned, and maintain or relinquish the same, and why the court should not make such order respecting the same as to it should seem fit, pursuant to the statute of the first and second years of the late King William the Fourth, chapter 58, and that in the meantime proceedings should be stayed; and such further proceedings were thereupon had that afterwards, to wit, on —— the —— day of ——, in the —— year aforesaid, a certain other rule or order was made in and by the said court of our said lady the Queen, before the Queen herself, upon reading the rule made in that cause on —— the —— day of ——, then last, the affidavit of ——, the affidavit of the plaintiff [*the assignee*], and upon hearing Mr. ——, of counsel for the plaintiff, and Mr. ——, of counsel for the defendant, [*the sheriff*,] and no cause being shown to the contrary by the said E. F. in the said first mentioned rule named, whereby it was ordered that the said E. F. should be barred of his claim to the proceeds of the execution issued against G. H. at the suit of the said E. F., and the money paid into court by the defendant in that action in the

cause of E. F. against G. H. in respect of the said execution, should be forthwith paid out of court to the plaintiff or his attorney, and that the said defendant should also pay over to the plaintiff the sum retained by him for poundage in respect thereof, and it was referred to the master to tax the plaintiff his costs of that application, which costs when taxed should be paid by the said E. F. to the plaintiff or his attorney; and which costs were afterwards, to wit, on —— day of ——, in this same term taxed on the said last mentioned rule by the master of the same court and amounted to the sum of £——, as appears by the master's *allocatur* on the said last mentioned rule, and thereupon the said several rules or orders at the prayer of the said A. B. are respectively entered of record in the same court here, according to the form of the statute in such case made and provided.

Entered of record the —— day of ——, 1842.

2. The like before Declaration.

As yet of —— term [*the term as in or as of which the entry is made*] in the year of the reign of Queen Victoria. Witness Thomas Lord Denman.

Ellenborough.

Day of ——, A. D. 1842.

To wit, [*county into which the writ of summons issued against the sheriff.*] D. late sheriff of the

county of ——, was on the —— day of ——, in the year of our Lord 18—, [*day of service of the writ of summons*] summoned to answer A. B. assignee of C. a bankrupt, according to the force, form, and effect of the statute concerning bankrupts, in an action on the case for the recovery of the value of certain goods and chattels seized and taken by the said D. as such sheriff, under a writ of fieri facias issued against C. D. [*the defendant in the execution*], at the suit of E. F. [*the execution creditor*] and which were claimed by him the said E. F., and such proceedings were thereupon had, &c. [*follow the last form from this part.*]

3. *Docket Paper thereon in Queen's Bench.*

The entry of ——, gent., on &c.

The entry of a rule of court made [&c. *here state the substance of the rule, order, or decision of the court or judge.*] (*a*)

Roll ——.

4. *Notice of Costs after Taxation, to be indorsed on the Copy Rule to be served with the Master's allocatur.*

Take notice that unless the sum of £——, allowed for costs on the within rule, be paid within fifteen days from the date hereof, proceedings by

(*a*) Vide Chitty's Forms, 590, edit. 1840.

execution will be taken for the recovery thereof (*a*). Dated the —— day of ——, 1842.

Yours, &c.

Plaintiff's [*or* " Defendant's] Attorney [*or* " Agent."]

To

Plaintiff's [*or* " Defendant's]
Attorney [*or* " Agent."]

5. Fieri Facias for Costs.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the sheriff of ——, greeting: We command you that you cause to be made of the goods and chattels in your bailiwick of ——, the sum of £——, which * in our court before us [*or in C. P.* " before our justices;" *or in Exch.* " before the barons of our Exchequer,"] at Westminster, according to the form of the statute lately made and provided, was adjudged to —— for his costs and charges by him expended in and about the prosecution of his claim against the said —— in our said court, [*or if the rule or order be against the party making the claim, and he was ordered to pay costs, then say* " for costs and charges by him expended by reason of the false claim of the said ——, prosecuted against the said —— in our said court,"] and whereof the said —— is convicted, as appears to us by entry of record of a certain rule of our said

(*a*) 2 Chapman's Second Addenda, 16.

court made [*or* " of a certain order made by one of the judges of our said court,"] on the —— day of ——, whereby [&c. *here state the substance of the rule or order*] together with interest upon the said sum of £——, at the rate of £4 per centum per annum, from the —— day of ——, A. D. 18—* and have you that money before us [*or in C. P.* " before our justices;" *or in Exch.* " before the barons of our Exchequer,"] at Westminster immediately after the execution hereof [*or* " on ——"] to render to the said —— for his said costs and charges, and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us [*or in C. P.* " to our said justices;" *or in Exch.* " to the said barons"] at Westminster immediately after the execution hereof [*or* " on ——"] and have there then [*or in C. P. or Exch. omit the word* " then"] this writ. Witness —— [*name of chief justice, or in Exch. of chief baron*] at Westminster, the —— day of ——, in the year of our Lord 1842.

6. *Capias ad Satisfaciendum for Costs.*

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the sheriff of —— greeting: We command you to take ——, if he shall be found in your bailiwick, and him safely keep, so that you may

have his body before us [*or in C. P.* "before our justices;" *or in Exch.* "before the barons of our Exchequer"] at Westminster, immediately after the execution hereof, [*or* "on —— next"] to satisfy —— the sum of £——, which [&c. *proceed as in the foregoing form, inserting that part of it which is between the asterisks* * * *and conclude thus:*] and have you there then [*or in C. P. or Exch. omit the word* "then"] this writ. Witness —— [*name of chief justice, or in Exch. of chief baron*] at Westminster, the —— day of ——, in the year of our Lord 1842.

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